Fredk T. Barber

HOW TO CONDUCT THE REAL ESTATE, INSURANCE AND GENERAL BROKERAGE BUSINESS

A BRIEF TREATISE ON THOSE METHODS AND VIRTUES ENTERING INTO REAL ESTATE TRANSACTIONS, WHICH EXPERIENCED BROKERS HAVE FOUND CONDUCIVE TO THE GREATEST SUCCESS; WITH CHAPTERS ON REAL ESTATE AND PERSONAL PROPERTY; ESTATES; LANDLORD AND TENANT; REAL ESTATE TITLES AND RIGHTS OF PROPERTY HOLDERS.

BY

WILLIAM ROGERS GAHAGEN

Member: Torrens Land Title Registration League of Ohio

CLEVELAND, OHIO
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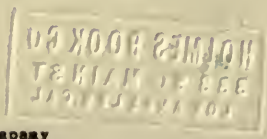

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FOREWORD

No profession offers larger opportunities for advancement of the individual and service to the community than real estate brokerage.

The frequent sharp turns in the stock market are causing shrewd investors to look more and more towards real estate as an investment.

The outstanding requisite for success in real estate brokerage is a thorough knowledge of the subject. This may be obtained in two ways:

First. In a practical way through close application and years of experience.

Second. Through a thorough study of those works which treat of the methods which experienced brokers have found conducive to success.

This brief treatise is simply a stepping stone to that field of literature which treats the subject in a detailed and comprehensive manner and goes to make up the real estate man's complete library.

The author has made frequent reference to Melberg's "How to Sell Real Estate or the Realty Business," in verifying statements contained in this work. It is hoped that the chapters on real estate and personal property, estates, landlords and tenant, real estate titles, and rights of property holders, will be found of value to students.

W. R. GAHAGEN.

Cleveland, O., June 1, 1916.

To Students of Real Estate

We desire to say to our readers that, aside from our own publications we can supply books of other publishers which deal with real estate problems.

We shall be pleased to give information relative to any book that will add value to a Real Estate Man's working library.

We specialize in books of this nature and want our readers to write us freely for further particulars relative to literature of interest to the profession.

A number of these works are so full of helpfulness that we feel warranted in bringing the following to the attention of our readers at this time:

"How to Sell Real Estate, or the Realty Business," by P. L. Melberg. This work is intended to teach and aid all those who have anything to do with real estate transactions; to help men and women to do business easier, quicker and more profitably; to teach beginners the fundamentals and detailed methods of practical business operations in real estate, and to give those already established, new ideas for current use. 272 12mo. pages. Silk cloth stamped in gold. Price $2.50.

"Practical Real Estates Methods." Prepared under the direction of the New York City Y. M. C. A. with the assistance of over thirty New York experts on real estate. 400 12mo. pages. Fine cloth binding. Price $2.15.

"Real Property Law," by Albert W. Kales, Professor of Law, Northwestern University Law School. This work portrays the historical development of Real Property Law from its beginning, down to the establishment of modern methods of creating and conveying estates. 248 12mo. pages. Cloth. Price $1.50.

"Insurance and Real Estate Accounts," by Charles A. Sweetland, Consulting Accountant. Gives complete accounting methods and office systems for life, fire, marine and accident insurance companies for offices and agencies; real estate accounting and records, all branches. 224 pages. 142 illustrations. Cloth binding. Price $1.50.

"Real Estate Educator," by F. W. Payne. Contains much valuable general information for everyone interested in real estate. 258 pages. Cloth. Price $1.00.

"The National Real Estate Journal." A magazine for real estate brokers. For many years the special protege and official paper of The National Association of Real Estate Exchanges. A veritable monthly text book on real estate. Per year, $1.00.

Any of the above books may be secured from our stock at any time. Any book will be forwarded prepaid on receipt of remittance.

REALTY BOOK COMPANY,
Cleveland, O.

REAL ESTATE MAN'S CREED

I believe in the people I am working for, in the work I am doing and in my ability to get results.

I believe that honest stuff can be passed out to honest men by honest methods.

I believe in working, not weeping; in boosting, not knocking, and in the pleasure of holding my job.

I believe a man gets what he goes after; that one deed done today is worth two deeds done tomorrow, and that no man is down and out until he has lost faith in himself.

I believe in today and the work I am doing; in tomorrow and the work I hope to do, and in the sure reward which the future holds.

I believe in courtesy, in kindness, in generosity, in good cheer, in friendship, and honest competition.

I believe there is something doing everywhere for every man ready to do it.

I believe I am ready right now.

PART ONE

CHAPTER I

General Introduction

Real Estate as a Profession

Some time ago a successful business man remarked in the course of an address to young college men that he believed selling as a broker on a commission basis provided greater opportunities than any other line of commercial activity.

I believe that this is true and that in Real Estate and its subsidiary relationships the chances of success with little capital are better than in any other calling. This will be obvious to those who have noticed the rapid rise in position and standing of men whose beginning was very unpretentious and whose rise to standing and affluence was very rapid.

In all its various features of sale, management, ownership or purchase, Real Estate ranks as a high grade, independent profession equal to any other occupation.

Of course, as in any other calling, success will depend more on the individual than the amount of capital invested; in fact, success really depends on the tact, enterprise and energy of the individual. Individuals, corporations and other institutions are coming more and more to look to real estate brokers as possessing information and knowledge of affairs in general that do not come to individuals in the ordinary walks of life.

The individual cannot afford to do the necessary traveling, investigating and general detail necessary to every venture, and he is looking more and more to find men trained to do this kind of work, with skill and dispatch; it is for this reason that the well informed broker is in position to render valuable service and will be able to command such remuneration as his clients may feel that good service is worth.

The competent broker has large opportunities to become acquainted with people, lands, investments and values in general, and for this reason has presented to him opportunities to act as an intermediary in the exchange of various landed property as well as other classes of investments.

Small Capital Required

From the fact that but little capital is required to carry on many phases of the business, any one who is assured of a mere living until his business is under way, may feel reasonably sure of success, provided only that he possess ordinary intelligence and selling ability, coupled with energy and determination. Of course the more of these qualifications you possess, the greater will be the degree of success.

Surely no other profession offers such a wide field for activity, as you are in no way restricted to territory, since the ethics of the business allow of expansion in any legitimate way.

Advertising possibly reaches its highest reward in the promotion of Real Estate operations and unlimited opportunity presents itself to those capable of its development.

Many Phases of the Business

So many phases of the Real Estate business are continually presenting themselves that any person with a grasping turn of mind and capable of original thinking, cannot help but find the calling very profitable; original ideas in Real Estate advertising, asserted through general methods of salesmanship, cannot be overestimated in real value.

These ideas may relate to methods of selling, advertising, management, or any one of the dozens of the subsidiary lines of the work.

One locality may be more healthy for one person than another; a business place in the mind of the broker may be much better adapted for a particular business than its present location; this might be the

case on account of better shipping facilities, more favorable labor conditions or better avenues to trade.

It is the business of the live broker to observe these many conditions, and when he can present sufficient data, he is usually in a position to command business. The successful Real Estate man must be able to see many things through the mind's eye and having seen them must spare no effort in trying to get others to see them in the same light that he does himself.

Some Virtues You Should Cultivate

In order to secure success in any business, but even more so in Real Estate than any other, it is necessary for you to start out with the firm conviction that your character and reputation are going to be your two most valuable assets. Without these, no great success was ever won and the future promises that the same results may be expected. The measure of your value to society and your fellow men is gauged by the strength of your character.

Honesty in Business

Probably the most essential element in any business man's character is honesty. We regret to say that the impression seems extant in some localities, that to be successful in the Real Estate business, one must be dishonest and able to handle deals through sharp practices; that there is something mysterious and unfathomable in every transaction; it should be your motive to cultivate openness in your dealings and to show that there is no other business that is really so transparent. So many chances present themselves to the agent to be dishonest that sometimes it will be found hard to adhere to the proper course; this is where you will have to decide whether it will be better for you to secure a small temporary advantage, or adhere to the only path that ultimately leads to success.

We repeat: honesty and integrity are absolutely essential to success in the Real Estate business; if

you succeed in establishing a reputation for honesty and square dealing, success is yours; it will not be necessary for you to parade your honesty; your acts will speak for you; your honesty will soon be well known and your friends will advertise the fact; this is known as character advertising and costs nothing; it is worth more than any that you can purchase with real money.

Politeness in Business

It will cost you nothing to be polite; nothing that costs so little will go so far; it is one of the most valuable assets of business character; you will find that a word of friendliness will do more to win the heart of your fellowman than anything else in the world.

Perseverance is Essential

If you expect to reach a high degree of success in business, do not fail to cultivate perseverance. Some men can work well only when being driven; to rise above the ordinary, you must cultivate a sort of bulldog tenacity or stick-to-it-ive-ness without which the most ambitious fail to reach the pinnacle of success. No one ever accomplished large things without months or even years of endeavor; when things looked the darkest and ordinary individuals would have despaired, the successful man worked the hardest; by persevering at times when the battle seems lost, one may be able to catch the opponent off guard and thereby find the goal easy to reach.

Think and Act for Yourself

Success comes to those who think and act for themselves. The reason that some brokers make more deals and find more buyers than others is the fact that they think and act accordingly. Success to them is merely a matter of observation and reconciliation of ideas. You must cultivate the activities of courage, enthusiasm and perseverance.

Courage

Courage, enthusiasm and perseverance form the team work necessary to get results. Do not forget that every success requires some effort. The chief difficulty with some people is that they are always looking around for something easy. Please remember there are no soft spots in business. If something is worth having, go after it.

Luck in Business

There isn't any such thing. The story is often told of a rural friend who when visiting a circus for the first time was shown a large hippopotamus, at the same time being given a vivid verbal description of the animal; after which, the friend remarked, "Aw go on; there ain't no such animal."

Again we say there is no such thing as luck in business. Nothing is more definite or positive in results than business discipline. Do not entertain for a minute the idea that you were born to have bad luck. Assert to yourself that what others are doing, you also can do. Thank your lucky stars that you are living in the twentieth century, just in time to take advantage of the greatest opportunities ever presented to mankind. Much unhappiness is owing to the thought that everything in your life is mapped out for you. Nothing is further from the truth.

Experience in Business

While experience is one of the greatest teachers, it is well to bear in mind that you will be able to profit greatly by observing the methods practiced by others who have made a success of the business. This will enable you to avoid the mistakes of the unsuccessful and by studying conditions as they arise, success will be sure to follow.

Real Estate Literature

By reading and studying the methods of others as

related in trade publications, and particularly books, in which experienced brokers show how to handle all situations, a great deal of information may be gained in a very short space of time. It is altogether possible for a young man with ambition and inclinations of a studious nature to gain from present day literature as wide a knowledge of the Real Estate business as was formerly possible in a lifetime of experience. This is not intended to discount in any way the value of practical experience in any kind of work, but to show that it is possible for beginners to gain a thorough working knowledge of real estate sufficient to enable them to start in the way which experience has taught others will lead to the greatest success. The desire of the author in presenting this work is to stimulate a desire for further, broader and more comprehensive literature on the subject and serve as a nucleus around which may be built a Real Estate man's library of great value.

If the writer succeeds in establishing such an appreciation of the value of this class of literature either to the beginner or the professional, he will feel amply repaid for the brief time spent in the preparation of this manuscript. The publishers of this book will be glad to furnish information relative to any publication of value to the profession.

CHAPTER II

How to Get Started

How to Get Results

It has been only a few years since that in many lines of business the proprietor could sit in his office and wait for business to come to him and it would come, but these conditions have passed as competition has waxed warmer. Today instead of sitting around waiting for business to come, the wide awake business man gets up and goes after it. Of course, this does not do away with the desirability of an office in which to conduct negotiations, but means that you may feel much more sure of success if you will solicit business than if you expect it to look you up.

A very successful business man once told the writer that when he started his career he had his office on the corner of Main and Franklin Streets in Johnstown, Pa. When asked in which building, the reply was given that it was not in any building,—he simply met his prospective clients outside or at their homes.

While it is very desirable that business should be conducted with becoming dignity and propriety, it is well to realize early that it is a mighty good thing to get right out and hustle in order to get started right. The final closing of deals and details it will be well to arrange in the privacy of your office.

Start With a System

Be sure to start out with some definite system in mind as to just how you intend to handle your affairs, and particularly your records. If these are left to shift for themselves from time to time in an unsystematic manner, you will find in a short time as your business increases, that what records you have accumulated are little better than none.

The Card System

A card system without doubt is better adapted for the proper retention of records than any other. It is

very simple, occupies very little space, is susceptible of extension, and gives you any information desired at a moment's notice. Cards 4 x 6 inches are best adapted for this purpose, and they can be ruled to answer the purpose of any phase of the business. These cards can be retained in a box or case of sufficient length to contain such a number of cards as you may expect your business to require. As your business increases, you can add to the original unit.

These should be a division for Properties for Sale, Properties for Rent, Business Chances, Inquiries, Mortgages and any other subject which may require your constant attention. By using cards of different colors, or by using tabs at different points on the top of the cards, any number of classifications may be made. The card system is better than book records, because each card is a unit in itself, occupies its own position, and contains nothing but information desired. It is not necessary to wade through a mass of irrelative matter to find what you want.

Cards for Listing Property

If you are just starting in business, one set of cards will be enough to hold all information regarding properties you may have listed for sale. If your list becomes large, it may be divided according to values. Another way to divide the cards would be to classify your properties as Residences, Factories, Stores, Farms, Etc. In the following outlines we will assume that an initial equipment is being installed—subsequent additions or changes must be made to meet individual requirements. Cards for listing residence property should contain following information:

Kind of Property.....St. Number.....
Size of Lot.....No. of Stories.....No. of Rooms...
Construction.....Kind of Roof.....Water.....
Heat.....Light.....Rent per Mo.....Bath.....Sewer..
Closet .....Barn .....Encumbrance .....Price ...
Terms .....Owner .....Address .....

Property for renting purposes should be listed on cards the same size as those used for property for sale, but should contain even more detailed information. The following is a good form for listing residences for rent:

Location .....Owner .....
Lot Size.....No. Rooms.....Stories.....Bath.....
Hall .....Water .....Heat .....
Interior Finish.....Built .....Conditions .....
Plumbing .....Roof .....Cellar .....
Laundry .....Stable .....Sidewalk .....
Sewer .....Street .....Gas .....Electric Light.....
Rent .....Lease .....Due .....
Remarks .....

Card for listing Residence Property for rent—4x6 inches.

For listing apartments or suites in buildings containing more than one family, the following form is well adapted:

Location.....Name of Buildings.....Owner.....
Size of Lot.....No. Tenants.....Description.....
Suite Rooms Bath Rent Building Built .....

Suite	Rooms	Bath	Rent

Material .....Condition .....
Heat ....Gas ....Ranges.....
Light .....Bath .....
Plumbing..H. & C. Water..
Cellar ..Laundry ..Sewer ..
Pavement ....Sidewalk ....
Remarks .....

Card for listing Apartments for rent—4x6 inches.

Any number of other forms may be devised by the agent to meet his needs. It is the usual custom to draw a diagram on the back of cards showing their position in the block in which they are located.

Remember that in the beginning it will not be necessary to go to a great deal of expense to secure an

efficient card system—you can put just as much or as little money in your system as you desire.

You could commence with say 1,000 cards plainly ruled, and which can be purchased from your stationer or printer for about $1.50. If you do not care to purchase a case to hold them, an empty envelope box or similar receptacle will give good service. Guide cards to separate the divisions should extend about one-quarter inch above the regular listing cards. As cards may be purchased in any color, you might buy 200 of each of five different colors.

It will cost almost nothing for an outfit of this kind and we suggest that standard printed forms as outlined be used if possible as they contain all necessary data and suggest the filling in of all necessary information, a valuable portion of which may be omitted if you depend at all times on your memory.

Vest Pocket Office Systems

Not many years ago most agents carried their complete records in their pockets, or their heads, in which case many times the records were not always available. It is, therefore, better to have them where they can be found when needed. As stated previously, the broker who desires to succeed will find it necessary to spend a great deal of his time among property owners and prospective clients. It is, therefore, well to carry with you a number of forms so that you will be in position to take down full particulars of any proposition which may present itself. If this information is taken down properly, you can file the card when reaching the office. A small memorandum book can be used to good advantage for jotting down notes about anything that may require future attention. Anything of this nature should be followed up diligently.

About Prestige

The more prestige you can command, the easier it will be for you to get results. Make a firm resolve to be something, to make your mark in the world. There

are many examples of others who have risen high in the esteem of their fellowmen through self denial, perseverance and courage. By choosing your methods of living and mastering to as large a degree as possible your environments you may reach heights in the public esteem which may now seem impossible.

Building Up a Clientele

When starting in business be sure to have printed in proper business style some good stationery, such as cards, envelopes, letterheads and such other forms as you may need from time to time. This printing need not be elaborate or expensive as you can add more as your needs increase. Be sure to select a printer that can do correct work as poor stationery reflects a taste of discernment that works to the detriment of the agent. If you are at a loss to know upon whom to depend, find out who is doing the work for other successful concerns, such as banks or other commercial houses. If a printer is doing work for this class of people, you may feel sure that his work is giving satisfaction. One of the first things to do is to have some cards printed, showing your name, address and nature of your business. These cards should be distributed among friends and acquaintances on every possible occasion, as they are good advertising, and cost very little. We consider the following a good form:

MYRON M. MARRON,
Real Estate,
Residence Property a Specialty

Selling
Leasing
Renting
Exchanges
Insurance

460 Citizens Bldg.

Phone Main 40 **Cleveland, O.**

Form of Business Card

Notaries and Justices

It will give you considerable advantage in many localities to take out papers as a Notary Public. The

duties of a Notary are to certify copies of documents. protest bills of exchange, take acknowledgments of deeds, or other papers, administer oaths, and various others. Courts of all civilized countries recognize protests of notaries on bills of exchange.

Notaries are usually required to furnish bonds for faithful performance of their duties. The amount varies according to the state in which you reside. They may be liable for damages arising out of neglect or improper discharge of their duties. Notaries are required to have a seal which form varies in different states, with which they are required to stamp documents which they handle. It will be desirable for you to secure the authority of a notary, because it authorizes you to act in the foregoing cases and will be the source of many small fees that prove profitable and at the same time give you some added prestige. If you desire to take out papers as a notary. write to the Secretary of the State in which you live for information, as the laws of the several states vary. This official will give you full information regarding the duties, qualifications, fees, etc.

The duties of a Justice of the Peace are similar in some respects to those of a Notary. While Notaries are usually appointed by the Governor of a State, Justices are generally elected to office. Justices have jurisdiction in many minor civil cases and in suits for fines and penalties. In cases except where the amount is very small, the right of appeal is allowed. The length of a term of office varies but is usually from two to four years. A certain length of time as resident of the state is required. A small bond is usually demanded. The fees vary with the laws of the different states.

Watch the Daily Papers

By watching closely the daily or Sunday papers published in your vicinity, you will be able to learn many things of advantage and value which can easily be turned to profit. This is especially true of the classified column of the large Sunday paper. By re-

ferring to the columns for sale, you will find out who are offering their property for sale or rent. These are the people with whom you should get in communication and endeavor to list their properties on your records. You can also get in touch with persons who desire to purchase property by referring to the columns under the heading "Real Estate Wanted." By watching the news section you will learn who is selling property or receiving money from other sources. These people who are receiving money from various sources will usually be desirous of investing it in a good, conservative, yet profitable form. You should consider it your duty to find proper investments for these people.

CHAPTER III

How to List Property

Your Card System

If you have a large number of properties listed, you can separate them by placing all cards containing property listed at $1,000 or less, together and follow with cards containing property worth $2,000 to $3,000 and so on, arranging the divisions as necessary. The different series can be separated by a card of different color, with some extension, so that the price can be placed thereon in plain view. In this way property to meet a client's requirements can be picked out at once.

Exclusive Agency

When listing property make it a point to get the exclusive agency whenever possible and for as long term as possible. You cannot afford to use your best efforts when someone else has the same property listed or when you have it for only a short period. Likewise the agent can make no greater mistake than to list his property with every agent he knows or hears of, because by so doing his property will be actually regarded as undesirable or unsalable. At any rate the chance for a sale is lessened to all concerned.

Prospects; How Secured

Real estate agents secure their lists of prospects from many sources. Sometimes they will receive letters from those having property to handle. Many prospects are secured by watching building operations. By watching the newspapers a lot of information can be obtained. Acquaintances can put you in touch with business. Sometimes one deal will lead to several others. In negotiating a loan, you may be able to make a sale. Advertising is one of the most positive methods of getting in touch with new business. For those who specialize, a clipping bureau can be used

to advantage. All essential information secured in any of these ways should find its way to your card system. You will be surprised what a fund of valuable information you can accumulate in a short space of time.

Getting a Line on Business

You can get a good line on business and often list desirable property by making a personal canvass of a certain section of your city. By coming in contact with the owners, you will be able to secure first hand information. If you are careful to use tact and good judgment, you will find it very easy to approach any one on this subject, as you will find owners generally as much interested along these lines as you are, and if you know your subject well, you can make your call mutually profitable, even if you do not secure any immediate business. At the same time you will secure some good will, which is always an invaluable asset for future use. You must always assume that you are in business to stay, and anything that you can do that will add to the esteem in which you are held will prove of future value.

Character Advertising

When you have the full confidence of your client, he will tell you many things regarding his property or business that the ordinary agent will not be able to find out. For instance, most owners have a price at which they will offer their property for sale, but will usually sell for a somewhat less figure when it comes to the selling point. When a broker has the confidence of his client to the extent that he can secure this advance information, he is in a much superior position to the one who does not possess this definite information.

Watch Tagged Property

By keeping a lookout for "To Let" and "For Sale" signs in your neighborhood, you can often find out just which properties are for sale or rent, and by

seeing the owner, often succeed in listing the place on your card. It is a good idea to keep a record of such places, even if you are unable to list the property, as you may find someone who desires this particular property. When this is the case, and you can present something definite to the owner, he will generally be inclined to talk business. In this way you will be sometimes able to earn a commission that would otherwise be lost.

Agent is Connecting Link

In acting as agent you represent the connecting link between owner and buyer and your success will depend largely on your ability to keep a good list of live property and also a list of those people who have sufficient money to invest in various forms of Real Estate.

Calling on Prospects

In calling on people for the purpose of listing their property or transacting business of other nature, do not fail to impress upon them to the very best of your ability any particular facilities which you may have that would result in quick action in closing the deal in question. You will find that your clients at most times desire quick action and any service you can offer that will advance this will be gratefully accepted.

About Your Commission

When listing property or business of any nature, leave no doubt in your mind, or that of your client, as to the amount of commission you are to receive and the time you are to receive it. A lack of understanding in the beginning often leads to trouble and dissatisfaction later on.

CHAPTER IV

How to Get and Hold Clients

Presenting Your Proposition

In presenting your proposition to a client, we cannot impress upon you too strongly the necessity of the virtues previously mentioned, such as character, self reliance, patience, politeness, and a thorough knowledge of your subject. A lack of any of these will contribute to failure. The firm conviction that you are right and an inward determination to succeed usually mean the beginning of successful undertakings.

Your will power may well be considered the central factor of your character and must be trained to habits of decision, otherwise you will not have strength to act well or resist wrong. Your habits must be so trained that you may feel absolutely safe in relying on them in every case of emergency.

Presenting Yourself

Upon presenting yourself to a client, do not be in too great a hurry to release yourself of all the information you may possess, rather lead your party to such a point of interest that he will secure his information through questions which he may ask you. This will not give him the impression that you are trying to deliver a lecture.

First Find Out What Your Client Wants

Before proceeding at great length, find out just what the individual desires of your client may be. Do not be afraid to ask questions and be cautious not to make the mistake of explaining your business to a party whom you are not sure is the one interested in your proposition. You need not seem curious or ridiculous in order to ascertain sufficient knowledge to proceed intelligently. When you hear of a prospective purchaser, lose no time in getting into communication with him, either at his home or at his office, or, better

still, make an appointment with him to call at your office, in which case you will be in a much superior position.

Never Force an Interview

Never force an interview. Find out if your man is ready to hear you. Let him know by your manner that you are a business man and that your time is valuable. If possible, have him feel that he is being favored by having you give him some of your time.

The First Interview

Your chief mission in the first interview should be to show the client that his best interest can be conserved by having his wants filled by some one whose expert knowledge of conditions and phases will render the service valuable. If you are able to succeed in this, the rest will be very easy and further negotiations will depend mainly on good diplomacy. Make a thorough study of your client at the first interview, determine definitely his needs, and do not confuse him by parading your whole line of stock in the nature of a department store advertisement.

Learn Conditions

Before proceeding far with a proposition, find out if any impossible conditions exist. This will forestall needless explanation on your part and prevent any embarrassing close such as "You have a good proposition but I don't have the money," or "I'd sell but the place does not belong to me." If you go on explaining your business to some one who is not in position to take advantage of your offer, you may be giving away valuable information that in the future could be used to your material disadvantage. If, however, you find that your man is interested, but not in position to entertain your proposition at present, then you can with good grace wait until a more opportune time before going into details. On the other hand, if you had made a full statement of your case at the first sitting, you no doubt would have lost the privilege of the second consultation.

See That Your Customer Gets What He Wants

After you find out what your customer wants, see that he gets it. It will be well to mention only a few properties that seem to meet requirements and to ascertain which of these gain the most favor. You will find that many times the client has not decided just what he wants. It is the duty of an agent to help this kind of customer solve problems of this nature, especially when the property is to be used for business purposes.

Use Plenty of Enthusiasm

When you find just what a client wants, use all the enthusiasm that you can muster to bear on the case. Irrelevant, disconnected statements, produce a discordant impression and do not get results. Use positive, not negative, suggestions.

Explain your subject even to the minutest detail. Gain the confidence and good will of your man by leading him to see how your superior knowledge of the business will be an aid in conserving his interest, and make it plain to him that you are in earnest and that you mean to see that every detail is carried out with legal exactness. Make him see that the work he is about to entrust to you will be appreciated and handled with fidelity. When this is really clear to him, he will feel that you are meeting him squarely, and you will have little trouble in retaining his business.

Do Not Do Business in Another's Office

You will find it next to impossible to do further business with a man after taking him to another's office. In this position you will be largely the inferior of the other agent and instead of directing the details, will be more or less at his mercy. Make every possible effort to arrange the final closing of deals in your own office, with the assistance of the other agent, if there is any one else concerned in the negotiations. You will sometimes find this hard to do, as wide awake agents know the value of this and use their influence

to have the deal closed in their own office. The chief advantage in this is that future dealings usually go to the agent in whose office the transaction is closed, providing results were satisfactory.

Auto Suggestions

Auto or mental suggestion is the art or science of controlling the minds or wills of others through suggestions or thoughts in such a way as to lead others to actually think as we do, or want them to. The conditions are best to practice the suggestion when our own minds are most free from wrong intent, when we are most interested in a subject, and when the mind of the recipient is in a receptive mood. False motives, unrest and loss of interest, will always reduce the effectiveness of suggestion. The logical method in suggestion is to lead your client or audience step by step in interest, maintaining yourself the same interest throughout the conversation without laxity and capping the climax with a grand appeal.

This auto suggestion is the process of instilling into the mind of another an idea upon which he will act involuntarily. You may start down street with the firm intention of going to a circus; while waiting for a car, you may notice a crowd of people waiting for a car in the opposite direction, leading to a baseball game. Almost instantly, this suggestion has taken the place of your voluntary intention and involuntarily you at once decide to attend the ball game.

Auto suggestion is a large subject and capable of great possibilities. All men of extended influence practice it in one way or another and many times without even knowing that such a thing exists. There are many ways in which its influence may be disseminated and it will pay you to learn all you can about it. While many persons are gifted with a personality and other qualifications that make the practice of this art easy, it is an acquisition that can be cultivated to a large extent by any individual.

Stick to Your Point

If you are working along a certain line, you are looking for a definite result. By placing too many properties before your customer, you allow his mind to wander and he will be losing the interest that you should be trying to create.

Fairness in Business

In offering your services to a client, remember that an element of fairness will earn its reward and do not use too much persistency in the sale of anything that is unreasonable in price, as the party making the purchase is likely to become one of your regular customers provided that he has been treated rightly. On the other hand, the party that sold would look on you with suspicion if you deceived anyone else in the purchase of his property. Do not fail to keep a list of all prospective customers with their individual desires, as sooner or later you may be able to find just what they desire.

Drum Your Prospects

When you add the name of a prospect to your list, do not fail to keep drumming him at regular intervals until it is clear that he has secured what he desired, or is permanently out of the market. This is the part of your business that calls for persistency without which you cannot hope for any high degree of success.

CHAPTER V

How to Sell Real Estate

Residence Property

We will suppose that through your various activities you have listed considerable desirable property for sale and that among these is a good residence property which the owner would be willing to sell for $2500. The following ad placed in your daily paper will likely bring several enquiries: "For Sale—On shady Somerset Avenue, desirable, well built, little house, $2500. For information call at the office of J. D. Myers, Room 54 Park Building." Simultaneously with your ad, you will want a neat bulletin board about 4 x 6 feet in size, painted, and placed on the property. This board should contain about the same information as your ad in the paper. This board can either be nailed to the house, or placed in a conspicuous place in the yard, so that all passersby can easily read it. This will give your name some publicity, which will be a good thing for you, as the more prominence you can secure, the easier it will be for you to do business, other things being equal.

In the course of a day or two, we will presume the party interested is a mechanic who has saved about $1500. He has seen your ad in the paper, has looked over the ground on Somerset Avenue, and then having seen your bulletin, comes to the conclusion that this is the property which you advertised for $2500. He has already talked the matter over with his wife and would be interested to find out on just what terms the owner would part with the property. This man is what is known as a good prospect and all that is necessary to make the sale is a display of tact and knowledge of your subject.

In Your Office

You will no doubt be seated at your desk when your customer arrives. After giving him a seat and

making him feel as comfortable and as much at home as possible (which you should endeavor to do on all occasions), enquire what you can do for him. He will tell you that he saw your ad in the paper and called to find out more about the place. You will at once proceed to find out just what kind of property he wants, how much he is willing to invest, and how much he is in position to pay down.

The Most Important Thing

This latter information is one of the most important things for you to find out, as you will then know whether or not it is worth while discussing the merits of this particular house. If you should go on with a full, flowery description, and then find that the party could raise only half the cash necessary to close the deal, you would find that you had not only outwinded yourself but tired your customer as well; but when you have ascertained that your client has sufficient cash, or nearly so, to swing the deal, it will give you increased zeal and strength with which to produce convincing arguments; but you should not deem the negotiations off at all times, providing the man has nearly, but not quite, enough money to finance the proposition. In your position as broker, your success will depend a great deal on your ability to bring the two parties together and your ability in assisting your client to raise enough money to swing the deal.

Show That the Price is Fair

Since in this case you have ascertained that your man has sufficient funds to make the purchase and you know by his calling that he is interested, you will clearly see that the only thing that remains for you to do is to show him conclusively that the price you are asking is a fair one.

Now while you know for yourself that the price is reasonable, you must face the fact that there are also other properties in the city that could be bought at a fair price and that at no time do you possess an

absolute monopoly on low figures; but it is necessary that you inform him your price and as you know it to be a fact in this case, you can tell him that the property was being held until recently at a much higher figure, but that on account of very good reasons, which you should be in position to explain, the property can at the present time be had for $2500. Of course, the owner was counting on getting more than $1500 down, but as he is in need of money, you can explain that you may be able to induce him to accept so small an amount as your customer is willing to pay.

Filing Objections

This will be the first opportunity for your customer to file objections, and as he has been looking at several other properties, he is of the opinion that $2,500 is pretty high for the residence in question; in fact, he tells you frankly that he would not pay so much. But it will be plain for you to see that he much prefers this place to the one he tells you he has in mind.

Give a Good Description

You will, of course, want to give him as good a description of the place as possible from the records which you have in your office. These records will show him that you were careful in getting a correct description and if you have made it a point to inspect the property personally, you will be able to give him first hand information regarding all details; among other things, you might mention facts concerning the painting, nicety of arrangements, conveniences that exist, nearness to schools, churches, colleges, etc.

Do Not Paint the Picture Too Bright

Be sure to show up the place to as good advantage as you can, but be careful not to paint the picture too bright, as when you afterwards visit the property and your customer feels any disappointment, you may find it difficult to overcome what your customer may feel was a kind of deception.

After thus describing the place and finding that he would like the property, you will understand that nothing stands in the way but the price and invariably the party and his wife will want to inspect the place for themselves. You can make an appointment with your customer to meet with the owner at a certain hour and together you can visit and examine the property. In the meantime you can assure your client that you will use all the pressure possible to bear on the owner to shade the original figure, but it is your honest opinion, and you so inform your client that you believe that a very great reduction cannot be expected in view of the attractive figure at which the property was first quoted.

Paving the Way

All this will be paving the way for your talk and argument on the final inspection of the property and through the use of tact and diplomacy you will make it much easier to close the deal.

Wife Often Has Final Word

As the wife often has the final word to say in the purchase of a home, it will be well to bear in mind at all times to make as good an impression as possible on the future lady of the house, as she is the one who is going to occupy it most of the time and is generally the first to admire conveniences and notice deficiencies.

Conducting Negotiations

In most cases you will have exclusive charge of the sale and be expected to conduct negotiations alone, but in this case as the owner is willing to accompany you, you can facilitate matters by bringing buyer and seller together.

Inform the owner that it will be quite impossible to get the amount which he asked, but that you believe that the sale can be negotiated if he will reduce his original figure. You will generally find that an owner, in a case of this kind, will shave off $50 or $100 from

his original price and in this case he tells you confidentially that he will reduce the price $100. As you know that your customer will pay in excess of $2,000, it is your business to find out just what difference, if any, exists and then negotiate that difference.

After your parties have met and had a pleasant introduction, you will proceed at once to inspect the property. Always remember that it is not wise to send anyone to look at a property alone. You will find that almost invariably they will lose interest, or find someone to speak disparagingly of the place.

Proceed at Once to the Point

Upon your arrival on the premises, proceed at once to point out any desirable features that are apparent. Do not make the mistake of appearing too anxious, as this in itself has spoiled the chance of making many sales. After showing the desirable features of the place to the best advantage, and assuring the purchaser of a good title, which you will personally see is clear and perfect, find out just what difference now exists. At this point the customer will usually ask the owner his lowest price and in this instance the owner will state the price which he has first asked but agrees to accept the price of $2,400 on the terms of $1,500 down and a mortgage of $900 as security for the balance. Your customer now makes an offer of $2,300, and after some little parleying, you suggest that they split the difference, which suggestion is finally agreed to by both parties. These conditions will vary largely in all cases, and your success will depend greatly on your ability to meet in a diplomatic manner such circumstances as arise from time to time. In the foregoing illustration, the sale is practically consummated and you are now ready to draw up the agreement.

Drawing Up an Agreement

As soon as your party has expressed his willingness to make the purchase, you should proceed to close the

bargain by drawing up an agreement in writing between the two parties for the purpose of binding the bargain. This should be done at the earliest possible time, as any postponement will give either party a chance to back down. This is something that you cannot afford to have them do, as you have spent considerable time in conducting negotiations and in order to accomplish anything further, would have to do the work all over again.

Critical Point in Negotiations

This without doubt is the most important point in the entire deal and should be handled with all the diplomacy you can muster. If you were to state plainly to your customer that you desire a deposit so that he will not be able to back out of the agreement, it would set him to thinking, through suggestion, that possibly he might want to back out; at any rate, he would not cherish the idea of being tied up to a proposition and this in itself would be enough to make him hesitate about making the deposit.

A good way to present the matter would be to suggest that other parties are looking at the property and that you fear if he does not act promptly, someone else might step in and take it, and that you would regret to see him lose the deal. The owner of the property might also change his mind, feeling that the price was too low. Many other reasons may be given to suggest quick action, so that your client will feel that you are doing him a favor by accepting something to bind the bargain.

Be a Good Closer

Always use your utmost efforts to become a good, forceful, diplomatic closer of deals, and you will master the most important feature of the Real Estate business. The most successful agents are those that insist most strongly on a deposit to close the deal when the first opportunity is presented.

Getting the Deposit

The deposit should be secured just as soon as your client has decided favorably, because experience has taught those in the business that many who are willing to close today may change their minds over night.

Amount of Deposit

The amount you should secure as deposit will vary with conditions and circumstances, but you should endeavor to get an amount large enough to cover your commission and any other expense to which you may have been put in case the party changes his mind and withdraws from the deal. On a deal amounting to $2,000 or $3,000, you should receive from $50 to $100, while on one amounting from $5,000 to $10,000, you should receive from $200 to $500.

Receipt for Deposit

When receiving a deposit as earnest money on a sale, you should not fail to give the customer a receipt, stating the amount of deposit, terms of sale, date and any information covered by the transaction. A receipt sufficient to cover the transaction may read:

Cleveland, Ohio, August 24th, 1915.

Received of Thomas Rowe $200 as a deposit or earnest money to be applied on the purchase price of $3,000, for lot and residence at No. 200 East 30th Street, Cleveland, O.

(Signed) John Doe, Agent.
For John Rowe, Owner.

Purchase Contract

It is better to give the purchaser a regular purchase contract in which are incorporated the amount of deposit, together with all other terms of sale. There are many forms of these contracts. The following is one that is in general use:

Contract for Sale of Real Estate

Cleveland, Ohio, December 10, 1915.

Received of .. *Henry Rowe* .. of .. *Cleveland, Ohio, One Hundred* .. Dollars, as part payment towards the purchase of the following described real estate, situated in .. *Cuyahoga* .. County, .. Ohio: *Lot 6 in Block 4 of section 2, township 3 South range 2, east of first principal meridian...* which is hereby bargained and sold to the said .. *Henry Rowe* .. for the sum of ..... *One Thousand* ... Dollars, .. *One Hundred* Dollars .. more to be paid on the delivery of a good and sufficient Warranty Deed of conveyance for same within .. *thirty* .. days from this date, or as much sooner from this date as the deed is ready for delivery after the title has been examined and found good and the balance to be paid as follows .. *One Hundred* .. Dollars ..... *monthly* .... until the entire amount is paid. The payment of said balance to be secured by trust deed or mortgage on the property above described. Should the title to the property not prove good, then this ... *One Hundred* .. Dollars is to be refunded, but should the said ... *Henry Rowe* fail to perform this contract on his part promptly at the time and in the manner above specified (time being of the essence of this contract) then the above ... *One Hundred* ... Dollars shall be forfeited by the said *Henry Rowe* as liquidated damages and the above contract shall be and become null and void.

.....Henry Meyers. (Seal)

Witness: John Henry.
Witness: Henry Brown.

In drawing up a contract of this nature, three copies should be made, one for the seller, one for the buyer and one for yourself. Each should be properly signed by all interested parties including yourself.

Commissions on Business

At the time of listing any property or other proposition, you should have a definite understanding regarding the amount of commission that you are to receive. The amount of commissions vary in different localities and is sometimes the cause of dispute and litigation. Commissions for various services are regulated by different schedules and cover many phases of activity. We believe the rates recently adopted by the Cleveland Real Estate Board are fair and cover the

subject completely. Following is the schedule adopted by the foregoing board:

Commissions

1—Minimum commission, sale of improved or vacant property $50

2—Minimum commission on any rental, one-half of first month's rent, except short term rental of furnished residences, commission for which shall be subject to special agreement.
On all sales..... 5%

3—For sale of improved property and making of original ground leases, sale of ground leases and improvements, leases of stores, lofts, manufacturing business and residence property; on sales and total rentals of $20,000 or less 3%
Sales and total rentals over $20,000..... 2½%
Minimum commission on sales and total rentals over $20,000 ..... $600

4—Vacant city property: on first $5,000..... 5%
$5,000 to $20,000: on first $5,000..... 5%
Excess of $5,000..... 3%
Sales over $20,000..... 2½%
Minimum commission on sales over $20,000..... $700

5—When making a lease of store, loft, manufacturing, business or residence property, an original ground lease or sublease thereof, the commission shall be figured upon the total rent, but it shall not exceed the commission which would be due for the sale of the property capitalizing the average annual rent at 6%.

6—In the sale of ground leases and improvements, the commission shall be figured upon the total sum of the sale price of the leasehold interest and improvements and the value of the ground determined by capitalizing the average ground rent at 6%.

7—Farm and suburban property:

8—In exchange of property each party is to pay his own commission based on the selling price and shall be so advised.

9—Brokerage shall be considered earned and payable when an agreement, either verbal or written, is reached between the contracting parties, the minds of both having fully met as to price and terms.

10—Should an imperfect or objectionable title prevent a sale, the full commission may be charged.

11—When part of the purchase money remains on mortgage, commission is charged on full value of the property.

12—*Management of Property*:
Commission is estimated: on collections.....5%
Additional charge for special services.
13—Caring for unimproved property. Commission is charged on taxes paid.....2½%
14—Charges for procuring tenants: Are to be made at the stipulated rates unless there shall have been a previous agreement between the owner and the agent for the collection of rent.
15—Real Estate loans: 2% on amount of loan to be paid by borrower; subject, however, to special agreement.
16—Official valuation by Cleveland Real Estate Board:
Values $100,000 or less, per $1,000.....$ 1.00
Excess over $100,000, per $1,000..... .50
Minimum charge 25.00

Good Sized Commissions

After you are in business a while, you will find it easier to obtain liberal commissions as people will gain confidence in your ability and will be willing to pay you handsomely, if they can feel reasonably sure of getting quick results.

How to Sell Farm Property

In the sale of farm property you will be dealing with an entirely different class of people than in handling city property. In no branch of the business will honesty and integrity count for more than in this field of endeavor, because fair treatment will soon win the confidence of your customer.

When a farmer is in the market either to buy or sell Real Estate, he will almost invariably go to some one with whom he is acquainted or to whom some one has recommended him favorably. For this reason, the best advertising that the dealer can do is to proceed at once to get on good terms with as large a number of farmers as possible in the territory in which he intends to operate. Your success in this business will depend largely on your personal efforts in the community. It is the best possible way to list this kind of property.

Where to Sell Farm Property

Buyers of farm property may be found chiefly among

those city people who are tired of city life and desire to move to the country, and farmers who desire more land or wish to change their location. Farming in the Central West is so profitable that men of means are buying farms and operating them on a large scale. Farming is now considered as fashionable as profitable, and many sales are being made to satisfy the whim or desire of the individual.

Many sales are made by people owning farms in the older sections where land is high for the purpose of investing in newer lands that are good and cheap. When a farmer learns that he can get $100 to $200 per acre for land in the Central West and purchase good land elsewhere for $3 to $25 per acre, he is very much inclined to do so. People in the cities are growing more and more in favor of the "back to the land" movement, and advertising in the daily papers of the large cities relative to this class of property will be read with interest. The best way to get in touch with farmers who are looking for farm property is to advertise in the local weekly papers.

Executing a Deed

After signing a contract for the purchase of property, the buyer will want some little time to examine the title to his property. This is a matter of great importance to all owners of real estate and anyone making a purchase of real property should see that the records are carefully investigated by some one competent and experienced before making final payment. As soon as the title is found perfect, you can close the deal by drawing up a deed.

The Torrens System

The Torrens system of land title registration, offers a wonderfully simple and efficient method under which the title to real estate may be recorded. This system is growing more and more in favor among Real Estate men on account of its simplicity and efficiency.

In some of the states legislation has been advanced legalizing this system. It is worthy the attention of the legislatures of all the states.

How to Draw Up a Deed

Great care should be exercised in drawing up a deed, and particular attention should be given to all details and dimensions of the land purchased. As no changes can be made after the deed is delivered, it is apparent that it should be drawn up with great precision. If the seller is married, his wife must sign and acknowledge the deed, because if she did not do so she might, in case of her husband's death, claim a right to one-third interest in the property as her dower rights in the premises.

Deeds must be written on parchment paper and most states have approved forms, which are in general use, and which are best to use, as in most cases they have stood the test of the courts as to their legal exactness; however, no particular form is absolutely necessary and any wording that makes the meaning of the parties absolutely clear is sufficient.

The Acknowledgment

A deed to be valid must be acknowledged before the proper officer, such as Notary, Justice of the Peace, or Commissioner of Deeds. If you have secured an appointment as Notary, you will be able to acknowledge the instrument without calling in some one else who is vested with this power. The necessity for acknowledgment exists in that it is then entitled to be recorded and can then be given as evidence without further proof of its execution. The practice of acknowledging deeds is one of the more recently enacted statutes and arose out of the necessity of a means to prevent fraud. As soon as the deed has been acknowledged, it can be presented to the register of deeds to be recorded. This completes the deal.

CHAPTER VI

How to Conduct a Renting Agency

The Renting Business

Along with the selling of Real Estate, a renting business can be conducted with considerable profit and since it is so closely connected with your regular business, it will be to your advantage to promote this feature of your work. From the fact that you are continually coming in contact with landlords who are willing to sell and tenants who are desirous of owning their own homes, you will readily see the possibilities that this feature of the business provides.

Two Seasons for the Business

There are two seasons of the year when particular attention should be given to the renting business: one is in the spring, the other in the fall; in fact, such a large part of the work is done in these seasons, that much cannot be expected to be done between those periods. This is caused by the fact that most leases are made to expire at this time of the year and any landlord that arranges his leases otherwise will many times be unable to effect new leases for the short period, or if effected some times at a reduced rate or even loss. Most leases terminate in the spring, and for that reason most of this work is done in that season.

Your Lists

Your properties for rent should be listed on cards the same size as your properties for sale and should give complete information regarding the property. They should, of course, be kept separate from the other lists, so that you can secure any desired information at a moment's notice.

The Inquiry

Upon receiving an inquiry for a house, you should

endeavor to find one that meets the requirements of your prospective tenant and then endeavor to effect a lease. If your applicant indicates a willingness to accept a property, provided he is not known to you, you should have him sign an application and make a deposit for one month's rent. This will give you a chance to investigate his integrity and reliability before giving him possession of the place.

Class of Tenants

The class of tenants to whom you will execute a lease is of utmost importance, as the size of one's bank account or ability to pay rent does not always indicate that the person would made a desirable occupant. The character of a single tenant may affect your chance of renting other property in the immediate vicinity and if the building happens to be a flat or apartment house, may result in many other suites remaining vacant. After you have received the application and deposit and examined the applicant's references, you should immediately advise him of the result.

Use Diplomacy

Considerable diplomacy may sometimes be used in explaining to your client that the information which you have secured must be submitted to the owner for his approval before you are in a position to accept his signature to the lease. In most cases in practice, however, the owner leaves all of these details to the judgment of the agent. This is the better way and in these cases the agent should use all the care possible in conserving the interests of the owner. Before taking possession it will be necessary to execute a lease giving the tenant possession of the property. Leases may be given for a month or a number of years. It is generally more advantageous to have a tenant remain for a long period at a moderate rental than to change tenants frequently at a higher rate of income. A person accepting a lease is liable for the amount of the full term of lease.

Restrictions

If there are no restrictions mentioned in the lease, the tenant may sub-let the premises to a third party. Leases should always be executed in written form, as in this way many differences of opinion are easily corrected. Tenants have a right to expect and receive a notice to quit the premises at or before the expiration of their term when renting from month to month, but in the case of a lease the tenant is bound to quit without notice when his lease expires, and thereafter is merely a trespasser unless his occupancy is with the consent of the owner.

Notice to Vacate

When it becomes necessary to give notice to vacate, same should be placed in concise terms and signed by you as agent for the owner. This notice should inform the tenant that he is required to give up possession, describing specifically the premises you wish vacated and the time at which they are to be vacated.

Curiosity Seekers

In conducting the renting business, you will find that many inquiries will come out of idle curiosity, and you will have a chance to use tact and diplomacy in sorting the bona fide prospects from inquisitive people who are not in the market for any kind of property. You will, of course, be courteous and fair to all inquirers just as necessarily as you are courteous to the owners.

Concerning Repairs

In the matter of repairs it will be necessary for you to find out from first hand information just what are reasonable demands for you to make of the landlord and what repairs it would be reasonable for a tenant to expect. In either case the agent's word will go a long way toward mending existing difficulties or ruptures. When you are able to secure a satisfactory ad-

justment, your work will be appreciated by all concerned. You should be very careful not to exceed your authority in promising repairs or betterments, as this often results in dissatisfaction to all parties and will ultimately place you in an embarrassing position.

Handling Seasonable Property

In the summer or winter seasons, according to your location, a good opportunity exists to do business handling resort property; especially is this true in the larger cities where a great many people have the means and desire to get away from the city for the summer; or if you live in a warmer section of the country, you will have an opportunity to solicit business from people living in a cold climate and who can afford to move to a warmer place for the winter months. This is a good class of business to handle, because the rentals are remunerative, your class of tenants usually good, and if you should make the mistake of securing an undesirable tenant, he need not remain long as the term of lease is usually for the season only. On the other hand, if he proves desirable, you can always figure on him as a future prospect and as you get control of additional properties, you can continually bring them to his notice.

How to Succeed

Your best way to make a success of this branch of the business is to get a good list of people who are known to rent this class of property. This can be done by the use of the classified columns of the daily or Sunday papers of your city. If you control an exceedingly good property of this kind, or several of them, you can in some cases use the popular magazines with good results.

Railroads and Other Transportation Companies

Railroads and other transportation companies are usually in possession of considerable information along this line, and are quite willing to co-operate with you

in view of the fact that they are at the same time furthering their own interests. It will be well for you to cultivate the friendship and keep in touch with the passenger agents of these companies.

Vacant Seasons

During the vacant season you should have a sign on the property with your name and address thereon. Some one may get information in this way that he would not otherwise take the trouble to ascertain. The demand for this particular kind of property varies with the economic conditions of the times and in periods of business depression is usually the first to suffer.

CHAPTER VII

How to Appraise Real Estate

Profitable Work

Real Estate agents are often called upon to appraise property and quite a good income is derived from this source in some of the larger cities. This work is done for estates, courts, lawyers and individuals. The man usually picked out for this work is supposed to have and use good judgment in the matter. No two properties are exactly alike, therefore their values must vary. The age, location, nature of construction, size of grounds, planning of rooms, light and sometimes the disposition of the party who owns the property all have a bearing on the value of the property.

Appraising Property

Because of these many features, it is almost impossible for any two men to agree as to the exact value and although this fact exists the work must be done by someone and no one can do it better than the intelligent and experienced Real Estate agent. Sometimes three or five men are chosen to appraise a property, and in this case the majority rules. When you are employed to appraise a building or property, examine it carefully and do not go through it in a haphazard way, because if you do so, you will be slow in building up a reputation for yourself. To be a successful appraiser, you should know a great deal about the construction of buildings and their cost. In order to gain knowledge along this line, we suggest that you keep in touch with builders and contractors in your vicinity and draw from them all the information that you can. If you were asked to figure the value of a property you would be expected to tell at what figure it would sell in the open market—not what it might bring at a forced sale. Every property is worth what it will sell for after a reasonable effort has been made to sell it. A house renting for $20 per month may be

worth as much as one renting for $25. In many cases the one renting for $20 is worth the most.

Future Values

If you are employed to place a future value on the property, the conditions will be different. In this case you will take the present value as a basis. It is worth so much as it stands and with a certain amount of money expended to improve it, it will produce a certain income or the increased demand for stores or buildings will cause the rents to increase. As was ruled in the reorganization of the traction properties in Cleveland, every man is entitled to 6% on his money in safe, conservative investment and in purely speculative investments considerably more.

Trolley Systems

The trolley systems are keeping realty men guessing as they sometimes build up and sometimes bring down values. In cities the trolleys favor both the suburbs and business sections. They have been the making of the large retail establishments in every city.

Estimating Values

In estimating the value of property many things must be taken into consideration. In farm lands, one must take into account the prices at which surrounding farms are being held; the general condition of the farm; soil and improvements should be taken into consideration when forming an estimate. Condition of the times also has a bearing on the case. The cubic foot plan is no doubt the best for arriving at the cost of the average building as erected in our cities at the present time:

Residences

Frame, shingle roof, pine floors and trimmings, two coats of paint inside and out, no bath or furnace, plain finish.... ..... 6 to 8 cts. per cubic foot

Brick, same class.....8 to 10 cts. per cubic foot

Frame, shingle roof, hardwood floor in hall and parlor, bath furnace and fair plumbing.....8 to 9 cts. per cubic foot

Brick, same class, composition roof..9 to 10 cts. per cubic foot

Frame, shingle roof, hardwood floor and trimming on first floor, pine floor and pine trimming on the second floor, good plumbing, furnace, artistic design, some interior ornamentation, well painted..11 to 13 cts. per cubic foot

Handsome brick, pressed brick and stone trimmed front, artistic design, hardwood floors and trimmings, good plumbing, furnace, tasty ornamentation, and throughout a very desirable residence.....12 to 15 cts. per cubic foot

First class brick, the kind of place that you find on the city boulevards, pressed brick and stone, hot water and steam heat, elaborate design and construction, hardwood floors and trimming throughout, best of plumbing.....
.....15 to 20 cts. per cubic foot

Barns

Private barn, shingle roof, painted, good foundation, stalls and bins.....5 to 8 cts. per cubic foot

Private barn, brick construction, composition roof, stalls and bins all very complete.....6 to 10 cts. per cubic foot

Flats

Frame, shingle or composition roof, hardwood floors and trimming, good plumbing, furnace, artistic design.....
.....8 to 9 cts. per cubic foot

Brick, pressed brick front, composition roof, good plumbing, furnace, bath, Georgia Pine or Oak trimmed.....
.....10 to 12 cts. per cubic foot

First class brick, pressed brick and stone front, hot water or steam heat, elaborate design, interior ornamentation, hardwood throughout, best plumbing.....
.....12 to 16 cts. per cubic foot

Palatial Stone, quarter-sawed oak or mahogany trimmings, hardwood floors, steam heat, extra plumbing, marble entrance, all modern conveniences.....
.....15 to 25 cts. per cubic foot

Churches and Schools

Frame.....9 to 11 cts. per cubic foot

Brick.....10 to 15 cts. per cubic foot

Stone.....15 to 25 cts. per cubic foot

If slate or metal roof, add ½c per cubic foot to above estimate.

Stores and Flats

First floor stores and one or two stories above: frame composition roof, pine floors and trimmed, bath, furnace, with fair plumbing.....9 to 10 cts. per cubic foot

Brick, pressed brick, stone trimming, hardwood floors and trimming, good plumbing, hot water or steam heat.....10 to 13 cts. per cubic foot

Store Buildings

Frame: Ordinary construction, gravel or metal roof, with hydraulic elevators.....4 to 6 cts. per cubic foot

Brick: Same construction.....5 to 7 cts. per cubic foot

Buildings Covering Large Areas

Brick and stone for factories or warehouses.....
.....4 to 8 cts. per cubic foot

Fireproof Office Buildings

Brick and stone, steel construction, every modern convenience, measuring 10 feet below the sidewalks to top of roof, omitting the courts....35 to 75 cts. per cubic foot

Estimates of Depreciation

The figures given were for new buildings. To find the present values under normal conditions, deduct the following percentages:

Brick, occupied by the owner, ½ to 1% per year.
Frame, occupied by the owner, 1 to 2% per year.
Brick, occupied by tenant, 1 to 1½% per year.
Frame, occupied by tenant, 1½ to 2½% per year.

In figuring the foregoing depreciation, it is assumed that the ordinary repairs have been made. If sufficient repairs have not been made, a larger discount should be deducted; on the other hand, if extraordinary repairs have been made, a less amount should be deducted. These figures are based on the present rate of Union wages and the average cost of material in the different cities of the country.

Vacant Lots

In estimating the value of a lot upon which a building stands, you will have to compare the prices of similar lots in the vicinity or equally good locality. By adding the cost of the building to the lot, a fairly good estimate may be secured. In estimating the value of a property, many things will have to be taken into consideration and this particular phase of the business will give any one excellent opportunities to display good common sense and sound judgment.

CHAPTER VIII

How to Advertise Real Estate

Advertising Requires Close Study

Real Estate advertising covers such a large field that it requires a large amount of study to enable one to master the subject. In the following outline we discuss the several features of advertising which we believe will enable you to undertake the work intelligently. Remember that public attention is one of the most to be desired features of your calling. It is the first thing you should try to cultivate when starting your business. Advertising is the one factor that can determine the extent of your operations.

Sincerity in Advertising

Remember that in your business you have something to sell, which is service, just as the merchant or farmer has something for sale, and that advertising offers the most direct route of reaching possible customers. Real Estate advertising should above all things be sincere. To overdraw statements regarding a piece of property will prove a boomerang because the investigation that always follows will show up clearly any misleading statements.

Art in Advertising

Real art in advertising consists in causing the reader to believe that he is in need of the property advertised and leaves him with the impression that it is worth his while to take the trouble to find out more about it. The advertisement should open a way for either a personal call or correspondence. It is just as easy to say too much as too little in your advertisement, because no advertisement can go into the detail that can be covered in a booklet, follow-up letter, or personal interview.

What to Advertise

Do not advertise something for sale that you do not

control or cannot deliver. State frankly what you have, weigh carefully every word, and see that every word means something. It matters not how much property you may have listed, if you do not advertise intelligently, you will never sell it.

Generally speaking, the more you advertise, the more sales you will make at better profit, other things being equal. Remember that the dealer who does not advertise to attract business is like the story of the fellow who threw his sweetheart a silent kiss in the dark; he knew what he was doing, no one else did.

Advertising Expressions

The following terms and expressions are the ones most used by newspapers and advertising people:

E. O. D., this means the copy is to run every other day.

E. O. W., means that the copy is to run every other week.

T. F., publishers instructed to run copy t. f., run it continuously till forbid.

Border Consists of plain or ornamental lines partly or entirely surrounding copy.

Classified or Liners. These are advertisements that are placed in publications with others of similar interest.

Electrotypes. This is a reproduction for printing purposes, made from either half tones, zinc etchings, wood cuts or other electrotypes. The face of an electrotype is chiefly copper.

Half Tone. This is an impression in printing produced by numerous cross lines, generally varying in number from 50 to 200 lines to the inch.

Stippled. When an electrotype is given a dotted appearance, it is said to be stippled.

Good Advertising is Very Important

As the future prosperity of your business may be truthfully said to depend on the kind of advertising you do, you should make a thorough study of the subject and master all the details possible. There is no line of business that is more dependent on good advertising than Real Estate and by the average dealer it is one of the most neglected fields at the present time; however, some brokers have reduced this branch

almost to a science and you will find that almost invariably these are the ones crowned with success. Many dealers have little knowledge of advertising, yet do not feel justified in employing an advertising man to handle their work. The best way to learn more about this subject is to study the works on Real Estate, all of which treat more or less on this feature, as it may be said to be the one all inclusive subject necessary to insure success. Trade literature or publications dealing on Real Estate topics handle this subject in an intelligent way and every dealer should avail himself of all the information that can be secured through a thorough study of the publications dealing with the subject.

Study the Advertisement of Successful Dealers

Make a habit to read and study the advertising matter appearing in all the publications you receive and particularly the large daily and Sunday papers in which you will find the advertisements of the successful men in the business. Make a study of these advertisements, picking out those that are good and correcting those that are not.

Class of Advertising

In placing your advertising, consider carefully the kind of people you desire to reach, which will be determined by the kind of property you may have for sale. If you have a small house for sale worth say $2,000, it would not appeal to the class of people that subscribe to a local publication going chiefly into the homes of wealthy people; on the other hand, if you have for sale a $25,000 property, it would be a waste of money to buy space in a publication reaching only a laboring class of people.

Use language in your advertising that conforms to the habits and environments of your readers. Ordinary people like ordinary talk. If you are using a trade publication, it will be well to talk in that vein of language.

Daily and Sunday Papers

For general Real Estate advertising, we consider no medium the equal of the large daily and Sunday papers. For quick results they cannot be excelled. For special features of the business, weekly and monthly publications may be used to advantage, but your ultimate success must be built on the basis of newspaper publicity.

Value of Space

The owners of small daily and weekly papers do not seem to have so definite an idea as to the value of space in their publications as is the case with the larger and more influential papers. Experience has taught advertisers that space in the small dailies is worth not more than 2 cents per inch for each thousand circulation with the rate consistently growing less per thousand for the larger publication. In local weeklies space is considered worth 3 to 4 cents per inch per thousand circulation. An advertising inch is considered fourteen lines agate type, which is the standard of measurement. When at a loss to know which paper to use in your locality, you will find the one with the largest circulation generally the best and most economical to use.

Classes of Advertising

Advertising is divided into three classes: Display, classified and readers. Display advertising is that which is set in black faced type with borders, illustrations or other designs to attract attention. Classified advertising generally is printed in small type under special headings. Readers are advertisements that are set in the same type as regular news and usually along with other reading matter.

When a flat rate is specified, it means that the publication will allow no discount for large space or consecutive insertions. Most publications allow a discount for the use of large space or continuous insertion. In classified advertising, the rate is often fig-

ured by the word. When it is quoted by the line, a line is usually considered six words but some publishers allow seven words to a line.

Position

The value of an advertisement is somewhat measured by the position it occupies on the page. Copy that appears at the top of the page alongside of interesting reading matter will attract more attention than copy appearing in some out of the way place in the same publication. Copy occupying the above position is said to have full position. Some publishers charge extra when special position is ordered, but if only requested will accommodate you if possible.

Standing Copy

We do not recommend the use of long standing advertisements, as copy to attract business should be alive with interest and tell a new story as frequently as possible. If a standing advertisement is used, it should be brief and to the point. It should consist of a heading, body and address. The selection of a proper heading to any copy you may use is one of the most important things to consider. Be sure to select something of interest, out of the ordinary, if you expect to get the best results.

Headings for Advertisements

The following are a few headings for advertisements, lists or letters. They furnish only a sample of the variety that can be brought to use in your advertising:

Here is something you want and it costs very little.
Nothing succeeds like success.
All aboard for Cleveland Heights.
Ready money talks loud here.
Now is the time.
A good investment is worth a lifetime of labor.
Let us help you in the selection of a home.
Third and quarter acres cheap.

Money paid on this lot will multiply rapidly in value.
Opportunity knocks but once—this is your chance.
If you hustle you can make some easy money here.
Midsummer bargains.
East End specials.
Beautiful lots overlooking Lake Erie.
Buy a lot with all improvements in and paid for.
Corner apartment—cheap for cash.
Happiness is assured if you buy here.
Make me an offer.
Special proposition for builders.
Here is an exceptional opportunity.
Business is good—thank you.
Our investments satisfy careful investors.
Three carlines pass our property.
We offer a small farm at the price of a city lot.
A few years' rent receipts will pay for this property.

Printing

If you use a circular in your advertising, one of the most important things is the printing. Assist your printer the best you can in getting out something that will reflect your tastes and ideas. Do not leave everything to the printer—if you do, your descriptive matter may resemble a circus dodger. Put individuality in all your printed matter, from your letterheads to publication copy.

Advertising Money to Loan

In advertising money to loan, the principal thing to do is to have the copy in a publication where it may be seen. If there is anyone in the community desiring to borrow money, you may rest assured they will see it. Let the copy be as brief as possible, only large enough to state the facts.

Other Mediums

In addition to those mediums mentioned, some dealers use to advantage billboards, street-car cards and other outdoor features. An excellent method of inex-

pensive advertising is the use of painted signboards on every piece of property that you may control. These boards may be as large as possible, and should be neatly painted, stating that the property is for sale or rent by you. Many Real Estate men waste large sums of money by advertising on blotters, novelties, programs and other features; while these methods are not always condemned, there are better ways to place your advertising appropriation.

CHAPTER IX

Property Management

A Profitable Phase of Business

Property management is an individual and remunerative branch of the Real Estate business. In many cases the owner of property has neither the time nor inclination to look after his own property. For this reason he will often place its management in the hands of a reputable broker, who now becomes his agent and in most cases handles the property in the same manner as if it were his own. In order to secure the exclusive control of desirable property, it will be necessary for you to establish a reputation as to integrity and fair dealing, as property owners are slow to entrust the care of valuable property to some one who may stoop to questionable methods in the conduct of their affairs. Most owners of Real Estate are men of considerable character and any improper handling of their affairs reflects discredit to themselves.

Making the Property Pay

After you have secured the exclusive control of a piece of property, it is your business to make the proposition pay as an investment. That is why the owner has placed the management in your hands and unless you can show that you can do this, you will not secure a large amount of property to manage.

An agent entrusted with property management collects the rents, pays the taxes, attends to repairs, pays insurance policies, sees that the property is rented, expels undesirable tenants, and, in short, takes entire charge.

Remit Promptly

When collections of rent are made, the remittance should be forwarded to the owner at the earliest possible moment, or at specified times, usually the end of each month. There is no one thing that will gain you more favor than strict attention to this particular

feature. If for some reason you are unable to collect and therefore unable to remit, you should mail the owner a statement of the facts giving the reasons for delay.

How to Get Properties to Manage

This is a very important subject because if you succeed in securing a few good properties to manage, you will be assured of a regular income in proportion to the extent of the properties managed.

Keep a good lookout for new buildings going up. This is the most logical place for a young broker to look for business. Find out at once the name of the owner and approach him, soliciting the management. If the owner is going to manage the property himself, you may be able to earn a commission by getting him a tenant. In order to secure properties to manage, you will have to be able to show financial responsibility, or have the endorsement of responsible people. If you enjoy the personal friendship of the owner, it will be of assistance. It is reasonable for an owner to expect responsibility in his agent, because a broker may be called upon to handle large amounts of money, as is the case in apartments and office buildings.

Exercise Economy

In the care of property, while you should at all times exercise strict economy, you should not make the mistake of allowing the property to run down, as sometimes a few dollars spent at the right time will be the means of saving the expense of much larger bills later on, which may arise from neglect of the property.

Consult the Owner Frequently

In respect to expenses necessary to the upkeep of the property, do not fail to consult the owner freely, because he has a right to expect you to do so, and by doing so you will be affording yourself protection. By confronting the owner with many small bills in your disbursement voucher, he may feel disappointment and get the idea that some one else might be able to handle the property with less expense.

CHAPTER X

Ethics of Real Estate

General Rules of Conduct

In conducting the Real Estate business general rules have existed among members of the Real Estate organizations of various cities for many years, but not until recently has any real effort been put forward to establish a concrete workable code of ethics. Probably the most elaborate code in use was recently adopted by the Real Estate Board of the City of Cleveland, which is recognized generally as the correct procedure in the conduct of the Real Estate business. The following ideas are incorporated in this code as approved by this organization.

The Broker Defined: A broker acts usually as an agent. Often he is an attorney for a client or in a position of trust. Sometimes he is a mediator who must convince both buyer and seller in their mutual interests. He must have an advertised office for the transaction of business in real property. A standing is not gained until he has had at least two years' experience. Persons who intermittently try to sell or lease Real Estate, and who do not depend on it for a living, are not entitled to full recognition by the Real Estate profession.

General Rules:

1. Do unto others as you would have them do unto you.
2. The most creditable transactions are those which equally benefit both parties.
3. Negotiations must be so conducted that they can stand the light of publicity after the transaction is closed.
4. Success is won by helping others to succeed. Business is mutual service and not a scheme to get rich at the expense of others.
5. The honor of the Board rests with each member. Loyalty in practice and in principle to the integrity of the business honors all members.
6. Always enter into a written agreement when there is a liability of subsequent misunderstanding.

Duties Between Members:

1. If one member holds a grievance against another,

based on a verbal agreement, the matter should be referred to the arbitration committee. In case the committee cannot settle the matter, through lack of evidence, or otherwise, a full written statement from each shall be placed on file, subject to the inspection of all members.

2. If a member lists a property with another member, he should give him the best price and terms and co-operate with him in closing the transaction. He shall not withhold information, even if he has a prospective customer of his own. The transaction should be closed with the first buyer willing to reach an agreement.

3. If broker A lists a property with broker B, which B accepts, and the owner, uninformed of this, lists subsequently with B, B can deal directly with the owner, provided A and B have not entered together upon negotiations. B must immediately notify A of his right to independent action.

4. In case any member is charged publicly or openly with using questionable methods, he should voluntarily lay all the facts before the Board of Trustees. We are organized to defend each other's honor when any member is wrongfully accused and should, therefore, know the facts. Unless a member does this, he must expect that a suspicion will be entertained that the facts would not stand the light.

5. No member shall discredit or interfere with the negotiations of another broker. Honorable competition alone is permitted.

6. It is not honorable for one broker to employ clerks, agents or stenographers, who have been employed in another Real Estate office, if there is any hazard that confidential information may leak out. Suspicion may unjustly attach to such a clerk if a transaction is closed and essential facts to the negotiation have been on file in both offices.

Commissions:

1. Adherence to the rates of commission approved by the Board is a moral obligation. The Board assumes no legal right to compel members to observe it. The integrity of the business cannot be maintained unless there is fixed some standard of rates. This makes for efficiency of service.

2. No member should discriminate among his clients in charges for commission. If a broker give one client a lower rate than another for the same kind of service, he demoralizes the business and discredits his own.

3. If regular commission has been refused from an owner, a member may refer the matter to the Board of Trustees who may bring the matter to the attention of the owner. All correspondence relating to such settlement, together with a statement of the facts, shall be open to the inspection of all members.

4. If one member brings a buyer to another member, and the transaction is closed, he is under no obligation for commission in subsequent deals.

5. If broker A, not having an exclusive contract, offers to list without solicitation, a property with broker B, it places B under no obligation, but if B accepts the listing, he must recognize A as long as A represents the owner, unless he limits this beforehand by a definite agreement. Broker B cannot list with broker C unless he first gains the assent of broker A. It is the duty of A to immediately notify B if his listing of the property is withdrawn.

6. In the absence of specific agreement otherwise, all commissions shall be divided equally between the offices closing the negotiation.

7. Members listing their own property shall pay full commission.

8. In case a broker is employed by a buyer, the commission shall be charged at the regular rates, and the owner informed before the deal is closed that he is not to pay commission.

Recommendations:

1. It discredits the standing of a broker to publish negotiations in the newspapers before they have been closed.

2. A member should refuse to list property at a net price unless the owner agrees not to quote a price for which he will refuse to pay the regular commission unless the member has a buyer who will so compensate him. A self respecting broker will not attempt to procure a buyer for property for a certain sum if he is aware the owner is offering it for a smaller sum.

3. Be conservative on expressing an opinion on values. It is the strength of Cleveland Real Estate that its values are lower than in any cities of its size. Artificial or inflated values are not wanted here.

4. When any person requests a valuation of property at a personal interview, or by telephone, the broker is entitled to make a reasonable charge and render a bill for such information.

5. A member should not try to sell property unless in his judgment the price and terms are reasonable.

6. Members should endeavor to secure the exclusive handling of property. The printed forms of the Board are recommended for a printed contract. When a written contract is not possible, or advisable, exclusive handling can be often secured through a moral obligation. Many owners will not list property through a second broker, if they see that the first broker is energetic. Advise the owner frequently of the progress of negotiations. He will prefer to act with

one enterprising broker than with several who make no special effort and who might involve his liability as to commission.

7. A prudent member does not give information over the telephone to any one, unless he is sure he knows to whom he is talking.

8. A member should conduct his own negotiations. The owner should be requested not to quote prices and terms and thus weaken the broker's standing with his client. All major factors in the deal should ordinarily be settled before the owner and buyer are brought together.

9. Do not unreasonably criticize the methods of a competitor and then only in the interest of the Board. Be ready to do so in his presence.

10. Report to the Board misrepresentations in advertisements, circulars or letters, which may entrap an innocent buyer or seller to his injury.

11. Evidence of criminal and illegal methods on the part of any one dealing in Real Estate, should be secured and brought to the attention of the Board so that the guilty may be brought to justice.

CHAPTER XI

How to Write Fire Insurance

Fire Insurance Defined

Fire Insurance is a contract to indemnify the owner of property in case of loss by fire. The word "Insurance" means a contract wherein one party is to be indemnified in consideration of the payment of a certain amount termed the premium in the case of a specified loss or the occurrence of a certain event.

Two Ways to Write Insurance

There are two ways to write Fire Insurance. One is to act as an agent for another agent on commission at from 10 to 20% of the premiums on the business you write. Agents do not write Insurance for another if they can secure a company of their own to represent. The proper way to write Insurance is to get some good company or companies to represent in your vicinity and in this case you will receive from 20 to 30% of the premiums which you secure on the business you write. Get the oldest and best companies that you can. Unless the first offer that comes along is a good one, do not accept it.

How to Get Companies to Represent

In the larger cities it is not always easy to get good companies to represent, as the most of them are already represented. In order to get in touch with companies desiring agents, write to the Secretary of the State in which you reside, asking him to send you a book showing the names of the companies which are allowed to do business in the state, together with a statement of the business they transact, with other available information. All Insurance Companies are required to register in a state before they can do business in that state. Write to a number of the companies named in the book and ask them to let you be

their representative. When you do not get a favorable reply at once, do not give up the effort. Things will come your way before long. When you succeed in getting a company to represent, you will be asked to give bond for the faithful performance of your duties, but some of these companies will not insist on this, if you can produce good references as to character and reputation.

How the Companies Will Help You

The companies will furnish you with a state license and possibly a Fire Insurance chart of your city. They will also give you advertising matter, such as blotters, calendars, etc., stationery, policy blanks, and agent's register, daily and monthly report blanks, and any information you may need, free of charge. The companies are anxious for you to succeed and will sometimes send an agent to see and instruct you.

Fire Insurance Underwriters

Most cities have an organization known as the Fire Insurance Underwriters. This is an association of agents organized for mutual assistance. A forfeit fee is required of each member to guarantee that he will recognize the rules of the organization. At any time a member wishes to withdraw, his forfeit will be returned, provided there are no fines assessed against him.

Writing Fire Insurance as a Business

Writing Fire Insurance is a good business if carefully and systematically followed up. Keep letting your friends know that you are in the business, and at the same time cultivate all the new acquaintances that you can. Whenever you hear of an old policy, find out if you can when it expires and then when the time comes, go around and see the holder and ask him to let you rewrite it.

Keep a record of the dates of your business in a book for the purpose and when policies expire be sure to follow them up. When you have a man on your

books, it is usually easy to keep him there if you give him proper treatment and look after his interests.

It is not what you make on the first policy that counts but what you make on renewals which require such little effort to get.

Insurance on Household Goods

A large amount of Insurance is placed on household goods and this kind of business may be picked up almost anywhere. Keep an eye on all vacant houses and as soon as they are rented, chase after the business.

Value of an Insurance Agency

The good will of an Insurance Agency sells readily and at a profitable figure. Keep this fact in mind and build up as large a business as possible, so that you can make something out of the sale of the business if you ever want to give it up. The companies charging the higher rates are usually safer, but you will generally find that any of them are safe enough. Your Real Estate business will be a great help to you in the Insurance business, as it will furnish you with much information of value that would be hard to secure in any other way. Try to get the Insurance on all the properties that you sell and all the properties on which you secure loans.

CHAPTER XII

How to Handle Business Opportunities

A Profitable Branch

Handling business opportunities can be made a very profitable branch of a broker's business and if handled properly, will warrant him in giving it a good deal of attention. This work will also be a help to you in your other business, as it will be the means of bringing you in contact with business people.

A Large Field

This work covers such a large field that it will be difficult for the inexperienced to know at a glance the intrinsic value of a given stock, bond, business or other security. This is the branch of the realty business where experience really counts for the most. Through close study of conditions and close application to the work, anyone may gain considerable efficiency. In handling the general brokerage end of your business, you will proceed along similar lines to those laid down for the conduct of the Real Estate business. Reply to ads appearing in the classified columns of your daily papers, and use the same columns to advertise anything you may have for sale. The following ad will prove effective:

> We can sell your business. Have cash customers waiting. Our facilities for quick action are unsurpassed.
>
> J. K. HOFFMAN
> 155 Citizens Building.

In answer to your general ad, you may receive replies both in person and by mail. When your customer calls in person, be sure to treat him courteously, but avoid listening to unimportant details.

Objectionable Features

One of the objectionable features of this business is the fact that many persons who wish to list their business for sale, insist on wasting your time with many details of little or no importance.

The first class business man is usually brief and to the point and, generally speaking, is not the one who is trying to dispose of his business. The man with more wind than ability is the one who is continually going out of business—going into something new—looking for something easy.

Your Memoranda of Records

In a memorandum book keep a record of full particulars, amount of business, assets, location, length of time established, rental, living facilities and reasons for selling.

Your Commission

Have it made clear as to the commission which you are to receive and when you are to receive it. The usual commission for selling an established business is 10%.

Form for Listing a Business for Sale

The following is a good form for listing a business for sale:

Location .....Kind of Business.....
Established .....Monthly Business .....
Reasons for Selling.....
Stock .....Living Facilities .....
Exchange For .....Fixtures .....
Rental .....Lease .....Lowest Price.....
Terms of Sale.....Incumbrance.....
Miscellaneous .....

In consideration of his trying to sell the above described business, I hereby give Harry Williams the exclusive sale of my store for a period of ..... days, and agree to pay him a commission of 10% of selling price, when sale is concluded.

Date..... James K. Simon, Owner.

The Exclusive Agency

Always insist on the exclusive agency for as long a period as possible, and when this is refused, have your client pay you a deposit to cover the expense of advertising his business. Most of the sales of these businesses, such as restaurants, confectioneries, drug stores, rooming houses, etc., will range in price from $500 to $2,000, and some dealers refuse to handle anything for less than $50.

Options

In cases where you are reasonably sure of making a sale, you will sometimes do well to secure an option at a fair price and then endeavor to secure a purchaser at a higher figure. In this way you can sometimes make quite a good deal.

Form of Option

The following brief form will answer the purpose:

"In consideration of $1.00, the receipt of which is hereby acknowledged, I, Harry Smith, agree to sell John Jones, my store at 1234 Adams Street, for $600, any time on or before June 25th, 1916.

Harry Smith."

How to Proceed After Getting an Option

After getting an option and you receive an inquiry regarding the business, give the inquirer the full particulars in a straightforward manner. Endeavor to interest him in the business, introduce him to the owner, and use every effort to close the deal. When your customer shows a desire to close the deal, politely request him to make a deposit in order to bind the bargain.

Do not fail to use every legitimate means at your command to secure this deposit, as you will learn that many people who intend to do a thing today will change their minds by tomorrow. In such cases you are again put to the trouble of finding another pur-

chaser. In all cases, try to close or terminate the deal at the earliest opportunity. This is the particular trait that means so much towards your ultimate success.

Get What Your Customer Wants

If a business which you may have does not meet the particular needs of your client, you should make a note of his requirements and then make an effort at once to get on your lists something that will suit him. You will generally be able to list what he desires, either through advertising or personal solicitation; as a matter of fact, the proprietor of nearly every business has a price at which he would be glad to sell. It will therefore be comparatively easier to list than to sell a business.

Bill of Sale

Title to a business is passed through an instrument called a Bill of Sale. Unlike Real Estate, personal property does not require a lengthy search of title.

Chattel mortgages, liens or judgment are recorded and it is only necessary to examine the records to determine whether or not they are encumbered.

Reasons for Selling

One of the most substantial arguments that you can use is a good reason for selling. Why does the owner wish to sell? If a business is paying, why should anyone wish to sell it? If the party who owns it cannot make a success of it, how could anyone else do so? These are only a few of the questions that you will be expected to answer. Your success in meeting them squarely will, in a measure, determine the extent of your success in this business.

There are many good reasons why one might wish to dispose of a business. Ill health forces many people out of a business, for which they are well educated and adapted. As a matter of fact, this particular reason has been used with such regularity that many consider it a standing excuse. Again, the profits may have been large

enough that the owner is able to retire from business; or he may want to enter the same business elsewhere on a larger scale.

On the other hand, the owner may have become interested in an entirely new line of business, or he may realize that he is not adapted to this particular business. This may be accounted for through lack of training, family connections, nationality, or incompatibility, unavoidable surroundings or environments. The man who has made up his mind to sell usually has several good reasons for doing so and you should avail yourself of all the information along this line that you possibly can.

FIFTY REAL ESTATE SELLING POINTS

1. Convenience of Location
2. Healthfulness, Pure Water, Drainage
3. Police and Fire Protection
4. Pleasant Surroundings
5. Restrictions in Building
6. Good Climate
7. Low Taxes
8. Free Deed
9. Transportation Facilities
10. Title Warranted
11. Good Neighbors
12. Postal Service
13. Manufacturing and Commercial Activities.
14. Cost of Living
15. Public Improvements
16. Price, Terms and Discounts
17. Growth in Values, and Causes
18. Churches, Schools, Libraries and Stores
19. Proximity to Points of Interest
20. Safety of Investment
21. Buy Before Property is Improved
22. Good Place to Build a Home
23. Get away from the Noisy City
24. Assessed Valuation is Growing
25. The Best Way to Save Rent
26. Landscape Gardening
27. Low Fares
28. Trolley and Boat Service
29. Pay for Your Home With Rent Money
30. National Attractions and Environments.
31. Values Sure to Rise
32. Free Trip to the Property

33. Well-known Parties are Building Here
34. Restrictions on the Future
35. Kind of Government
36. Choice Lots are Selling Fast
37. No Liquor Sold
38. Let Your Wife Decide
39. Now is the Time
40. Size of Plats
41. Social Conditions
42. Your Prestige Will Add to the Value
43. Pay Rent or Own Your Home—Which?
44. People Who Know Values Buy Here
45. The Children Deserve to Live Here
46. Beautiful Photos of the Property
47. Specific Instances of Increased Values
48. Many Houses are Being Built
49. The Only Safe Investment
50. Which Shall It Be—4% in the Bank Without Security or 10% in Real Estate With Absolute Security?

PART II

CHAPTER I

Real and Personal Property

Real Property

Property is divided into two classes: Real and Personal. Real property has the characteristics of immobility or permanency of location, as land and rights issuing out of land. Personal property is such property as does not have the above named characteristics. Technically, "Real Estate," when used to describe property includes all estates for life or for greater period, but not leaseholds or other inferior estates.

Lands, Tenements and Hereditaments

All real property is comprehended under the terms lands, tenements and hereditaments. The soil or earth is the land and includes everything erected on its surface or buried under it. Theoretically it extends indefinitely upward and downward. Land, therefore, includes the buildings and trees, or other things growing upon the land as well as the minerals which may be under the surface. Where water runs over the land, the ownership of the land implies the right to use the water, but does not create a permanent right of the property. The property consists in the use. A grant of lands without qualifications conveys not only the soil but everything else which is attached to it or is a part of it, the buildings, trees, mines, crops, etc. On the other hand, some courts have held that the grant of a factory included the contiguous land which had been used with the factory and which was necessary to such use. Likewise it has been held that with the grant of a house passed also the land upon which it was built. But the land must be both neces-

sary and contiguous to the use of the building which has been conveyed in order that it too may pass with the grant. Thus the grant of a hotel and the land adjoining it was held not to include a lake in the rear of the hotel. Manure made upon a farm is generally considered a part of the land and to pass with the grant of the land. The rolling stock of railroads has been considered a part of the realty and to pass with the conveyance of the road without specific mention of same.

The general rule is that a permanent annexation to the soil, in itself personal, makes it a part of the realty. This rule holds in some cases, even when the thing annexed is the personal property of another. If a stranger erects a building upon the land of another, having no estate therein, the building becomes the property of the owner of the land. This happens even though the stranger acts under a mistaken claim of title. A conveyance of land will not transfer the structure with it but will operate as a revocation of the license and compel the owner within a reasonable time after the revocation to remove the structure or lose his right in the property. Where the person erecting a structure is the owner of the soil, or has an interest in it, then it is more difficult to determine from the circumstances under which the question may arise when the annexation is sufficiently permanent in its character in order to merge the thing attached into the realty. This subject is termed "the law of fixtures."

Tenements are those things which may be "holden." The term signifies anything which is "held in tenure."

Hereditaments are any property which is heritable. Hereditaments are of two kinds: corporeal and incorporeal. The first includes everything of a substantial nature, such as lands, houses, mines, etc. The second includes that class of real property consisting of intangible things: where the owner of one piece of land enjoys a right of passage across the land of his neighbor, or a right to drain water off his neigh-

bor's land, it is considered an incorporeal hereditament.

Fixtures

Fixtures are those things which are personal in nature, but become realty by reason of their annexation to the soil. They are removable, or not, depending upon the circumstances in the case. In the first place, the attachment must be of a legal and permanent character. Where there is no attachment or annexation, the thing retains its personality. Annexation may be actual or constructive. Actual annexation is where the thing is annexed by actual attachment as a house built on a stone foundation, or fences with posts solidly imbedded in the soil. Constructive annexation is where the things are fitted for use in connection with the premises and are generally added as a necessity to the full enjoyment of the premises. For example, shelving, keys, movable shades, storm doors, etc., are included in fixtures of constructive annexation. The right to remove fixtures will depend upon the intention of the parties at the time of annexation, the effect of their removal and the relationship of the person making the removal to the fixtures and to the land.

Question of Fixtures Between Landlord and Tenant

When the question arises between landlord and tenant in respect to the fixtures placed upon land by the tenant for years and for life respectively, a liberal rule is followed. The general rule is that everything permanently annexed to the soil becomes a part of the realty and cannot be removed, but since a tenant's interest in the land is of a temporary nature, the presumption of permanency resulting from the character of the annexation has in more important cases to give way to another presumption, that the tenant did not intend to continue the annexation longer than his tenancy. For this reason, there are certain exceptions created in behalf of the tenant with regard to certain classes of fixtures. A tenant is permitted to re-

move a fixture, even though firmly affixed to the soil, provided that such removal does not result in any permanent or material injury to the property. These may include trade fixtures, agricultural fixtures, and fixtures for domestic use or convenience. Until recently the common law was relaxed only in favor of trade fixtures, while agricultural and domestic fixtures received the same construction as is applied to all fixtures between the heir and executor. At the present time the tendency is to permit the tenant to remove all fixtures he may have attached to the soil which can be removed without permanent injury to the premises.

Time of Removal

When tenants desire to remove fixtures, they must do so during their tenancy, or while in possession and holding over. If the landlord has entered and resumed possession, the tenant's right is gone and the fixtures revert to the landlord. If at the expiration of his term, the tenant accepts a new lease in which there is no reservation of the rights to remove the fixtures erected under the first lease, the tenant's right in the fixtures is lost.

Emblements

When growing crops are planted by the owner of soil, they constitute a part of the realty. If they were planted by a tenant holding under the owner they are personalty as regards the owner during the continuance of the tenancy, but as a rule realty in respect to all others. Whether one has a right to growing crops after the termination of a lease, depends upon the certainty or uncertainty of its duration. This right is called "Emblements."

Trees

Trees constitute a part of realty, because they are a product of the soil which is not planted annually. When the trunk of a tree is entirely within the boundaries of one man's land, the entire tree belongs to him,

even though the branches and roots find their way into the land of the adjoining owner. The adjoining owner need not endure this trespass but may cut off projecting roots and branches. Where a tree stands on the boundary line so that a part of it is on either side, it becomes the joint property of both and neither can remove or injure it without the consent of the other.

Double Ownership in Lands

Technically the law knows no double ownership in lands, or any other kind of property; but since land is made up of composite elements, the soil itself, the trees, and other products, and annexations upon it, and the minerals under it, it may be divided up into these elements, so that one party may own the trees, another the surface, another the minerals. A sale of the trees gives to the vendee a right of property in the standing trees with the right to enter upon the land for the purpose of marketing the lumber.

Classes of Estates

Four circumstances tend to determine the natural subdivisions of estates:

First. The quantity of duration or the interest.

Second. The quality of the interest.

Third. The time of enjoyment; and,

Fourth. The number of owners.

Under the first division is included freeholds and estates less than freeholds. Freehold estates are subdivided into freeholds of inheritance and freeholds not of inheritance. A freehold is one that endures for an indefinite period which may last during the life of some one. Estates less than freeholds are leaseholds. They are limited to endure for a certain number of years. These are divided into estates for years, at will from year to year, and at sufferance.

Under the second heading, estates are distinguished by their qualities. They may be either absolute

or determinable. A determinable estate may be terminated before the natural expiration of its period by the happening of some contingency. Determinable estates are of four kinds: Estates conditional at common law or estates tail: estates upon condition; estates upon limitation and conditional limitation. As to their quality, estates are legal or equitable. A legal estate arises under common law and is recognized thereby. An equitable estate is the result of equity proceedings and is recognized only in courts of equity.

As to time of enjoyment, estates are divided into two classes: Estates in possession and estates in expectancy. The first includes those to which the right of possession is immediate; the second, those which are to take effect at some future time. A vested estate is one to which there is a present fixed title concerning which there is no uncertainty. In the fourth classification estates are considered in respect to the number of persons in whom the right of the property is vested. From this standpoint they are divided into two classes: Estates in severalty, and joint estates. In the first of these one person is vested with the ownership, while in the second case, the ownership is vested in two or more persons. Joint estates are again subdivided into five classes: Joint tenancy, tenancy in common, tenancy in coparcenary, tenancy by the entirety, and estate in partnership.

Estates in Fee Simple

A "fee simple" is a freehold estate, free from conditions. It is the highest estate known to the law and is absolute in so far as it is possible for one to possess an absolute right in property. "Fee" implies an unlimited estate or inheritance. The three terms, fee, fee simple and fee simple absolute, are used interchangeably. The two latter terms are superfluous phrases and are generally used to distinguish an estate from those which are called "base" or "qualified" fees.

Disposition

A fee was originally considered to be a grant of

an estate for life and afterwards when the lands were granted to one "or his heirs forever," the heirs were considered to be co-equal grantees or donees with the first taker, consequently, the power of alienation was not given to the owner of such an estate. Afterwards he was permitted to alienate it with the consent of the lord or presumptive heir. Afterwards, the right was given to defeat the inheritance of all the heirs except the oldest son. Successive changes of this character have taken place from time to time until the free right of alienation was given by statute as an inseparable incident to an estate in fee, and to such extent is this right guarded by the statute that a condition in absolute restraint of alienation is void.

Liability for Debts

Originally this was not an incident of freehold estates, and no provision was made in the English law for subjecting the estates of decedents to the satisfaction of all the debts of the ancestors. In this country, lands are generally liable for the debts of the owners in all forms of action before and after his death and in the hands of his heirs and executors.

Estate-Tail or Qualified Fees

Whenever a fee is qualified so as to terminate or be liable to defeat at the happening of some event or act, the fee is "base", "qualified", or "determinable." There are four classes of such fees, namely, "Fee upon condition", "fee upon limitation", "a conditional limitation" and "a fee conditional at common law." Some authorities apply the term "base fee" only to the latter class.

Fee Conditional At Common Law

In early days it was customary to limit estates to one or particular heirs instead of heirs in general. Generally it was to the heirs of his body, that is his issue, his lineal heirs, but it could be limited to any class of heirs; thus, the grant instead of reading "To

A and his heirs forever" as in present deeds, might read "To A and the male issue of his body." If the first taker died leaving no heir of the kind mentioned, the estate was defeated and reverted to the donor, but as soon as that class of heirs came into being, as in the case of an estate, to one and the heirs of his body, upon the birth of a child, the conditions were held to be so far performed as to permit the tenant to dispose of the land in fee simple. In this case the subsequent death of the issue would have no effect upon the purchaser's title.

Estates-Tail

On account of the readiness with which a fee conditional could be converted into a fee simple, much dissatisfaction was felt by nobles and landed gentry. Their custom was to settle their great estates upon their oldest sons and their issue so that they would be kept within their families and not be subdivided into smaller estates. Estates-tail are "estates of inheritance" which instead of descending to heirs generally go to the heirs of the donee's body which means his lawful issue, his children, and through them to his grandchildren in a direct line, so long as his posterity endures in regular order and course of descent and upon the death of the first donor without issue, the estate determines. The tenants in tail cannot alienate the estate, but it has all the other characteristics of a fee simple.

In early colonial times, estates-tail prevailed in this country generally, and they could in some of the states, be barred by fines and recoveries. At the present time they have been abolished in most states. In some states they are changed into fees simple, while in others they are divided into a life estate and remainder to issue, or other easy modes of converting them into fees simple are provided.

CHAPTER II

Estates

Estates for Life

An estate for life is one whose duration is limited by the life or lives of certain persons. It may be the life of a tenant or of another or the joint lives of the tenant and others. The expression has generally been extended so as to include all freeholds not of inheritance; therefore, it will embrace an estate for an uncertain period which may continue during a life or lives. An example would be a grant to a widow during widowhood. Should she marry, her estate would terminate, but it may endure as long as she lives. It is of no importance how uncertain the duration of the estate may be, or how likely it will be to terminate in a given number of years, if it can and may continue during a life, it is considered a freehold estate for life. An example is a grant to one until he can out of the rents or profits pay the debt of the grantor; however, if the conveyance be a devise to executors until the devisors debts are paid, they would take only a chattel interest. An estate for one's own life is considered under the law to be the highest and best estate for one's life that any one can have. The courts, therefore, construing a doubtful grant for life, would interpret it to mean for the life of the tenant rather than for the life of the grantor.

Limitations in Estates for Life

Formerly a grant of an estate under common law was construed to be for the life of the grantee, where there was no express limitation, but now, in all the states where not otherwise provided by statute, all grants and devises are made to convey a fee simple estate, unless a less estate is limited in specific language. In devises, a life estate is sometimes raised by implication—thus A devised his lands to his heirs

after the death of B. Wherefore it was held that B took an estate for life by necessary implication since no one else could take the estate except the heirs and they were postponed by the will until B's death.

The Merger of Life Estates Into a Greater

If a life estate is conveyed to one having a reversion or any other greater estate, or the tenant acquires the reversion, the life estate is merged in the latter; so would the estate for the life of another merge in an estate for one's own life, but if the tenant for life conveys to the reversioner an estate for life of the latter, a possible reversionary interest is left in the tenant. There will be no merger and the tenant would have the estate again if the reversioner should die during his lifetime. The two estates must also be of the same character. A legal life estate will not merge into an equitable estate in remainder.

Alienation by Tenant for Life

Unless there is a condition in restraint of alienation, a tenant for life may convey his estate as freely as the tenant in fee. He may alien his entire interest if he desire, or he may grant any smaller estates and may divide up his estate into any number of smaller estates so long as they do not together exceed his life estate, but if he attempts the conveyance of a greater estate, such as a grant or bargain or sale, which operates under special statutes or under the statute of uses, it will only have the effect of conveying what interest he has in the premises. Deeds of this nature do not operate by transmutation or possession and therefore do not divest the tenant in remainder or reversion of his seisin. The nature and effect of these various deeds will be more fully considered in a later chapter.

Apportionment of Encumbrances

The life tenant is bound to pay all the accruing interest on existing encumbrances upon the estate, but

he is not compelled as against his reversioner to pay off the principal of the debt. The payment of the principal falls upon the reversioner. Should the tenant pay off the entire debt, he becomes creditor of the reversioner for the share of the latter and vice versa. In such cases the payment is apportioned between them.

Claim for Improvements

The tenant for life has no claim for any improvements which he may have upon the premises. He is obligated to keep the premises in repair, but under no legal obligation to initiate improvements. If he does it in a voluntary manner, he gives rise to no claim against the reversioner for the payment of his share of the expenses. On the other hand, the tenant for life is obliged to pay all the taxes of every kind which may be assessed upon the land, and if he fails to do this, a receiver may be appointed to take charge of the estate and pay the taxes out of the accruing rents and profits. If the life estate is held in trust, the trustee may charge the life estate with the expense of the administration.

Estovers

Under the term "Estovers" is comprehended the timber which a tenant is permitted to cut upon the land for use upon the premises and for keeping them in repair. The tenant whether he is one for years or for life has this right as compensation for the duty of keeping the premises in repair and so does his assignee. The right, however, is limited to the amount which is reasonably necessary for present use. If the tenant exceeds this amount and cuts timber for the purpose of sale, or cuts a certain amount of wood, which is not intended for estovers, and exchanges it for what he desires, he is guilty of waste and is liable to the reversioner for damages. Neither can he use them on any other place than the one from which they were taken. For example, a widow who had two places set out to her dower from two separate estates

was not permitted to cut timber on one place for the use of the other.

Emblements

Emblements are the profits which the tenant of an estate is entitled to receive out of the crops which he has planted and which have not been harvested when his estate terminates. Under this term, are included only such products as are of annual growth and cultivation. This would include the different vegetables, wheat, corn, beans, hay, potatoes, etc., but they do not include grasses, which are only planted perennially, nor fruit trees, because in these cases a tenant cannot expect to reap a harvest in one year, and is aware of that fact when he plants them; however, this does not refer to the right of a nursery man to trees and shrubs which had been planted for the purpose of sale. In this case the plants are fixtures which he is entitled to remove. If the crops have been planted by another, the tenant will not be entitled to them, no matter how much care may have been given them. Incidental to the right of emblements, the tenant or his representatives have a right of entry upon the land after the termination of the tenancy for the purpose of attending to the crops while growing and for harvesting them when ripe. The rights of ingress and egress, however, are limited to what is necessary for these purposes, but it has been held by some authorities that the tenant would be liable for the rent in such occupation of the land. In custom it has not been general to pay or demand it. In some states it is the law that the tenant may pay rent for the time during which he holds over. At common law it has been definitely settled as to what constitutes emblements and the extent of the right of emblements. On account of local usages and customs, the local law will sometimes be found to vary with the common law. The more important principles will be found uniform as applied throughout the country.

Who May Claim Emblements

A tenant must show that his estate was one of uncertain duration in order to claim emblements. This would include the representatives of all tenants for life, whether they are conventional or legal life estates, and because they constitute the larger class of those who are entitled to them, the subject has been discussed in this connection. Tenants at will have the right also but not tenants for years at sufferance. As an outcome of the law of emblements, the executors of the tenants in fee, in preference to the heirs, are entitled to the crops, if they are ripe for harvest; but if the estate is terminated through the fault of the tenant, as when he abandons his premises, he is not entitled to emblements—thus, a widow has no claim to emblements in case she terminates her tenancy during widowhood by marriage; neither has a mortgagor in case the mortgage is foreclosed by the mortgagee, because he could have avoided its termination by payment of the mortgage. If the purchaser under a foreclosure sale permits the mortgagor to retain possession for any length of time and plant crops as a tenant at will, he will have a right to the emblements. The rights to emblements are enjoyed not alone by the parties above mentioned, but also by their assignees and sub-lessees, unless the tenant is restricted from alienating his interest. Often sub-lessees and assignees would be entitled to emblements when the original parties would not. For example, if a widow having an estate during widowhood were to lease the premises and then marry, her tenant would be entitled to emblements, while she would not have been if she had been in possession.

Dower Estates

Dower is the interest which is provided by law for the widow out of the real property of her husband. At common law it is an estate for life in one-third of the lands, tenements and hereditaments. During coverture, her interest though an encumbrance is simply

an inchoate right which she can neither assign, release nor extinguish except by joining in the deed of her husband. It cannot at this stage be considered until the death of the husband. At his death the wife surviving, the right becomes consummate. She has not an estate, simply a consummate right to an estate and can assign in equity and release at common law. It only becomes an estate in the lands when it has been set out to her. The act of setting out the dower is called the assignment of the dower. From that time on, she has a life estate with all the rights, incidents and disabilities which pertain to that class of estate.

Estates in Which She Has a Dower

The widow has dower in all freehold estates of inheritance which her issue, if any, could have inherited as heirs of the husband. It therefore includes everything comprehended under the terms lands, tenements and hereditaments. The estate of a tenant in common is subject to dower. The dower attaches to the husband's undivided interest in the land before partition and afterwards to the share set out to him. Estates in partnership are also subject to dower, but the dower is subordinate to the demands that may be made by partnership creditors against the partnership property.

Dower in Lands of Trustees

A wife has no dower in lands which her husband holds as trustee, except so far as he may at any time have an equitable interest therein. This rule applies to every kind of trust, whether express or implied, as for instance where the husband before marriage has entered into a contract for the sale of land.

Dower in Mortgages

The mortgagee's wife has no dower in mortgaged premises until foreclosure. This applies to both lands and equity. Under common law, as well as under modern theory, this is true, although the deed of con-

veyance which was delivered as a mortgage on its face value is an absolute conveyance. The judgment of courts that this deed was a mortgage would bar the wife's dower although she was not made a party to the action.

Dower in Proceeds of Sale

Where it is necessary for the settlement of varied interests, in the lands of which she is dowerable, that her lands should be sold, her dower rights follow and attach to the share in the proceeds of the sale to which her husband would have been entitled. Generally this is true, for whatever cause the land might have been sold, but it has been held that she is not entitled to dower in the surplus of the proceeds of the sale of the land in foreclosure of a mortgage in which she has renounced dower.

Estates by Courtesy

The rights of the husband in the wife's property during coverture have been entirely taken away in some states, the married woman being entirely vested by statutes with all the rights and capacities in respect to her property of a single woman. In other states they are more or less modified and regulated by statute. On account of the laws of the various states covering this subject being so different, it will be evident that an accurate knowledge of the law of married women can only be had by careful study of the statutes of the several states. The laws of the states vary so largely on this subject, that even a brief treatise is not permissible in the limited scope of this work.

An estate by courtesy is a freehold estate limited by operation of law to the husband for life in the lands and tenements of the wife in which she was seized of the estates of inheritance during coverture. The estate by courtesy becomes initiative upon the birth of an issue born alive and capable of inheriting the estate and takes effect in possession upon the death of

the wife. Until the death of the wife, the husband cannot by reason of his courtesy make any claim to the lands or to the rents and profits she receives therefrom. Estates by courtesy do not exist in some of the states. The requisites of estate by courtesy are: First, Lawful marriage; Second, Seisin of estate during coverture; Third, Birth of a living child in the life of a wife; Fourth, The death of the wife.

Marriage

The marriage must be a lawful one. Should the marriage be void on account of some illegality, courtesy does not attach, but if the marriage is only voidable, the husband will courtesy unless it is actually declared void during the life of the wife. In some states dissolution of the marriage by decree of court at the suit of the wife for faults of the husband, will take away the husband's estate by courtesy.

Estate of Inheritance Necessary in the Wife

In order that courtesy may attach, the estate of the wife must be a freehold of inheritance and no form of conveyance of a common law legal estate of inheritance can be devised by which the husband may be deprived of his courtesy therein; but the legal estate of which the wife may be possessed as trustee, is not subject to the husband's courtesy.

Necessity of Issue

The estate by courtesy is in theory only a continuance of the wife's estate of inheritance and is supposed to be intrusted to him during life for the benefit of the wife's issue. It is therefore necessary by the common law that the wife should have issue, born alive, who can take the inheritance as heir to the wife. The husband's right became initiative upon the birth of the child and attaches and vests his possession whether it was born before or after the acquisition of the estate; and provided it was alive, its death

at any time would not affect the husband's right of courtesy. The issue must not only be born alive, and capable of inheriting the estate, but it must also at common law have been born during the lifetime of the mother. The birth of the child after her death by means of the Caesarian operation would not give the husband courtesy. In Pennsylvania the birth of a child is not necessary to estate by courtesy.

Liability for Husband's Debts

As soon as the right becomes initiative by the birth of the child, as well as after it is consummate, it may be subjected to the satisfaction of the husband's debts and can be sold under a levy of execution. Equity will not interfere in behalf of the wife or children. It can be conveyed by the husband independently of the wife's conveyance of her estate in the land.

How Estates May be Defeated

A statutory divorce will defeat the husband's right of courtesy where it is granted for his fault. In Pennsylvania it is provided by statute that if the husband unjustifiably deserts his wife for the year preceding her death, he shall forfeit his claim to courtesy, so likewise the acceptance of a testamentary provision which was made for him in the place of the courtesy will bar the courtesy.

CHAPTER III

Landlord and Tenant

Estates Less Than Freeholds

An estate for years is one granted for a certain definite period of time by the owner of the freehold who in this connection is called the lessor to one called the lessee, to hold and enjoy during the time stipulated and under the terms and conditions agreed upon.

Term Defined

Since the estate is to last for a definite period, having a precise beginning and end, it has acquired the technical designation of a term from the Latin "terminus", but the period need not be definitely fixed by the contract of the parties which creates the estate. A contract or lease would be valid if it contained sufficient means of ascertaining its duration. A lease, therefore, for so many years as B shall name or to A during his minority would be a good term, while a lease for so many years as A shall live would not be good, as a term, since there is no way in which the duration of the term can be ascertained until its expiration. It has been held to be a good lease where the lessee was given the possession as long as a certain building was not completed. If a lease is given for a certain time, the validity is not affected by an additional stipulation that the tenant's possession thereafter is to continue at the will of the lessor.

Interesse Termini

The lessee does not acquire an estate in the land until he has entered into possession. His interest is a right of entry and is termed interesse termini. Before possession is acquired, he cannot maintain any action against others in respect to the land. Before the entry, the right of possession and the right to bring action, are in the lessor. It has also been held at common law that the lessee cannot before entry

maintain an action of ejectment. The interesse termini, however, is so far a vested interest as to be capable of descent to the personal representatives or of bequests like other chattel interests. It can also be assigned or released. A delay on the part of the lessee to convert his "interesse termini" into an actual estate, does not suspend the liability on the covenants of his lease until such delay is occasioned by the fault of the lessor. But it is the duty of the lessor to deliver the possession.

The Rights of Lessee for Years

As a general proposition, the lessee is entitled to all the rights of freeholders which arise out of actual possession, including those of estovers, fixtures, and the modes of enjoyment of the land. But the estate for years can be regulated by agreement of parties to an almost unlimited extent, and the rights of the parties under a lease are as variant as the contracts. There are few, if any, rights which might be considered as invariable incidents of leaseholds.

How Created

A contract is the basis of every tenancy for years. A permissive occupation of the land is not such a tenancy as would support a claim for rent. At common law an estate for years could have been created by a parol contract. But under the English and American statutes all leases for more than three years must be put in writing and signed by the parties; otherwise they shall have only the force and effect of the estates at will. Although the statutes declare such parol leases to have only the force and effect of estates at will, yet in those States in which the doctrine of tenancies from years to years is recognized, they should be construed to be tenancies from year to year, to the tenant, but if the leased property is in the possession of a third person who refuses to give it up, it is the lessor's duty to oust him; until he does this, he breaks his covenant for quiet enjoyment and is liable

for damages to the lessee, if the tenant enters into possession and pays rent. In all States such tenants would have a right to the statutory notice to quit before an action of ejectment could be maintained against them. But mere possession without an actual payment of rent will not impose upon the tenant the obligations of a tenant from year to year. It is not necessary that such lease should be under seal in order to be valid. The statutes of the different States are similar in their general provisions, but there is a diversity in respect to the length or duration of these leases, which in some States will be valid without writing, while in some, again the writing is required to be under seal, or in other words, to be a deed. But if only one of the parties signs the lease, and the tenant enters into actual possession of the premises, the party signing cannot relieve himself of liability on the lease by showing that the lease had not been duly executed by the other party. This is true whether the party failing to sign be lessor or lessee. In Maine it is held that the signature of the lessor and the deal of the lessee bind both parties to the lease. If the lease is executed by an agent, according to the English law, and that of some of the States, the authority must be given in writing, while in other States, writing not being under seal, a parol power of attorney will be sufficient. Whenever a lease is reduced to writing, parol evidence is inadmissable to vary or add to the terms of the lease as set forth in writing.

Form of Instrument

In the execution of a lease a general form of deed is usually followed, and certain terms and forms of expression are used. But any form of deed, and any terms or mode of expression will be sufficient for the creation of an estate for years, which shows the intention of the lessor to transfer to the lessee, possession of the land during a certain determinate period of time. If the lease is delivered as an escrow, no title passes to the tenant until the condition has been

performed. The words of grant usually employed are, "Do grant, devise and lease," and signify generally the creation of a present vesting term, and not a future or contingent one, but this implication may be controlled by the other provisions of the lease. The lease must of course describe the land, which is leased with sufficient accuracy to admit of its identification. But an agent of the lessor may under parol authority supply the deficiency of the description. And if the tenant enters into possession under the lease, he cannot object to his liability under the covenant on account of the deficiency of the description.

Acceptance of Lease Necessary

In order that the lessor may be divested of his possession and of his rights incident to possession, and the lessee be bound by the terms of the lease, acceptance of the latter must be shown. Where it operates entirely to his benefit his acceptance may be presumed; while in other cases it may be inferred from acts, such as entry into possession and the like, as well as established by words of formal acceptance.

Relation of Landlord and Tenant

As soon as a lease has been delivered and accepted by parties competent to contract, a relation is established between the lessor and the lessee which is known as that of "landlord and tenant." A privity of estate and a tenure are established which bind the parties to each other in respect to the duties imposed by the law and the implied covenants. This obligation exists no longer than does the relation of landlord and tenant, while the obligations imposed and created by the express terms and provisions of the instrument rest upon privity of contract, and survive the dissolution of such relation. The lessee, however, does not become liable on his covenant to pay rent until the lessor has put him into possession of the premises.

Assignment and Subletting

Unless restrained by a covenant or changed by statute, the lessee can assign his term or grant a sublease of the same without let or hindrance of the lessor. And a restriction against assignment does not prevent a subletting, and vice versa. The restriction must apply expressly to both to restrain both. The assignment or sublease is subject to the same requirement of the statutes as the original lease. An assignment is effected whenever the entire term is disposed of, leaving nothing in the lease by way of a reversion. And a grant will be considered and treated as an assignment whether it be in form of a new lease or merely a transfer of the old lease. The reservation of a different rent does not make the transfer a subletting. The decisive question is whether there is a reservation left in the lessee; and a grant of a portion of the premises for the entire term would be an assignment and not a sublease for such portion. But if the whole, or only a part of the premises be demised for a shorter duration than that of the lessee it is a subletting. And the most inconsiderable perversion, such as the last day of the term, would be sufficient to give the grant the character of an under-lease.

Involuntary Alienation

A leasehold estate is also subject to a sale under execution and under the bankrupt and insolvent laws, like other personal property for the satisfaction of the lessee's debts. And such assignees become liable on the covenants of the lease if they accept the assignment, and exercise the rights of ownership over it. But the assignees have the right within a reasonable time to elect whether they shall accept or reject the lease. The mere fact that the lease is properly included in the assignment will not render them liable on the covenants.

Disposition After Death of Tenant

A term, like other personal property, can be be-

queathed, or if a tenant dies without making any disposition, it depends to the executor or administrator, who takes it and disposes of it like any other chattel, unless the restriction against alienation expressly includes the personal representatives in such prohibition. And the right to devise a leasehold is not taken away by a general condition in restraint of alienation although it may be by express limitation.

Implied Covenant for Quiet Enjoyment

This is a covenant for the quiet enjoyment of the premises by the lessee. It is not an absolute covenant for the protection of his possession against the acts of the whole world. It extends only to the acts of the landlord and of strangers asserting a paramount title. The lessor does not warrant against the acts of strangers who do not claim a superior title, but in order that his own acts may constitute a breach of covenant for quiet enjoyment. But a landlord is guilty of neither tresspass nor eviction when he enters for the purpose of making repairs. When the covenant of quiet enjoyment is broken, the obligation to payment of rent is suspended, and the presumption in ordinary cases is that the tenant suffers no damage, the rent being an equivalent of the use. If the lessee claims damage, he must show it.

Implied Covenant for Rent

The covenant for rent is implied from the very reservation in the lease of a certain stipulated sum. This implied covenant is, of course, separate and distinct from any express contracts into which the lessor may enter.

Implied Covenant Against Waste

But the very acceptance of the lease assumes an implied obligation to use the premises in a husband-like manner, and keep the building and other structures in repair; and a failure on his part to do so subjects him to "an action of waste."

Letting Land Upon Shares

It is quite common in this country for the owner of land to let it to persons for the purpose of cultivating it, with the agreement that the parties shall each have a share in the crops. Such contracts create between the parties different relations, according to their intentions, as expressed in their agreement. If the intention appears to be that the landlord shall lease the land to the farmer and that his share of the crop shall be received in lieu of, or as, rent, the relation of the landlord and tenant is created. Under these circumstances the tenant has such a vested interest in the land as that he may convey by a recorded deed the future crops, and the grantee's title will prevail against an attachment by his creditors. The tenant is in possession of the land, and the landlord has no vested interest in the crop, as a crop. His rights in, or to, any part of the crop attach only upon a division and delivery of the same, and the landlord has no action against the tenant for the delivery of his share of the crop until demand has been made of the tenant for such delivery. If the tenant abandons the farm while the crop is growing, and rescinds his agreement thereby, he loses all the interest in the growing crop under the law of emblements. But if one is employed to work a farm, with the understanding that the crop shall be divided between him and the landowner, and there is no apparent intention of leasing the lands and taking the share for rent, the farmer has no estate in the land beyond a license to go upon it for the purpose of cultivating; the landowner is in possession of the land and must maintain all suits for tresspass and other injuries to the land. The parties are tenants in common of the crop to the amount of their respective shares, from the time of planting until a division and settlement is made; and the share of each in the crop is at all times after planting subject to the claims of creditors. A third relation may exist between them, viz., that of employer and employee, where the farmer is given his share of the crop, not as a partner or ten-

ant in common, but as wages. Whenever that relation was intended by the parties, the farmer has no title to any part of the crop until his share has been set apart for him, and he may discharge him for cause. His rights in the contract are of a personal nature, and cannot be assigned to another, at least while the contract remains executory. It is very often difficult to determine which of these reactions such a contract creates. The only guide is the intention of the parties, and no general rules can be given except those above presented, unless it may perhaps be added, that it seems to be a presumption of law that the relation is one of landlord and tenant unless the contrary intention appears. If the farmer should purchase the reversion to the land under a judgment against the owner, the claims of such owner, under the contract for working the land on shares would pass to the purchaser as an appurtenant, and would become merged in the farmer's general ownership of the land.

Estates at Will and at Sufferance

Estates at will are those estates which are determined at the will of either party, and arise only upon actual possession being taken by the tenant. The tenant at will has no interest in the land which he can convey to others. The relation is that of landlord and tenant's assignee. The landlord may treat such assignee as a trespasser, unless he accepts rent from him accruing subsequently to the assignment. By acceptance of the rent the assignment would be confirmed, and the assignee recognized as tenant. The tenant is entitled to estovers, and also to emblements when the tenancy is determined by the landlord. And he will also be liable in damages for the commission of waste, although the technical action of waste might not be applicable.

How Estates at Will May Be Determined

An estate at will may be determined by any act of either party which indicates an intention to put an

end to the tenancy, or which is inconsistent with the continuance of the relation of landlord and tenant. The death of either party determines the estate. If the lessor dies the estate becomes a tenancy at sufferance and the lessee's personal representatives, in case of his death, have no right to possession under the tenancy. Any assignment or conveyance of the property, whether voluntary or involuntary, will destroy the tenancy. The assignment or conveyance by the tenant will have the same effect, as soon as the landlord has received notice of it. Until notice, the landlord may continue to treat the lessee as his tenant. The tenant is allowed a reasonable time within which to move his effects from the premises; and where he is entitled to emblements he may still enter upon the land for the purpose of cultivating and harvesting the crops.

Estates at Will Distinguished From Tenancy From Year to Year.

In consequence of the many hardships resulting from the uncertain tenure of estates at will, and the too often arbitrary and sudden termination of them by lessors, it became at an early day, a rule of law that where rent was reserved and paid by the lessee, the lessor could not terminate the tenancy without giving due notice of his intention to do so. Tenancies at will where no rent was reserved could be terminated immediately upon notice. In this way, by a course of judicial legislation, arose a class of estates which are for an uncertain period, but which differ from the common law estates at will, in that they are tenancies for an uncertain number of fixed periods of time, their duration being regulated by the manner of paying the rent, i.e., by the month, quarter or year, and which continue to exist as long as the required notice to quit is not given by either of the parties. These estates are called tenancies from year to year. The tests by which it is determined whether an estate for an uncertain period is a tenancy from year to year, and not at will, are the reservation of rent and the necessity of

giving notice in order to determine the tenancy. If the rent is reserved and notice to quit is required, it is a tenancy from year to year, and the length of the fixed period of the tenancy is governed by the time of paying the rent. But it is always within the power of the parties, by express agreement, to give to the estate the characteristics of a tenancy at will, even though the rent is reserved. And if in such a case the tenancy is determined by the lessor between the intervals of payment of the rent, the landlord can only recover rent accruing up to the last pay day. The term "year" in the tenancy from year to year is here used as a unit of time, and under the term "tenancy from year to year" are included tenancies from month to month, quarter to quarter, and the like, in the same manner as an estate for years includes an estate for one month.

Tenancy at Will

An express tenancy at will can only arise under two circumstances: First, where land is leased for an indefinite period and no rent is reserved for its use and occupation, and secondly, where there is rent reserved, and by the express agreement of the parties, the tenancy is to have the characteristics of a tenancy at will. Parties may agree to waive the right to notice.

Tenancy at Will Arising by Implication

When a tenant enters upon the land for some purpose other than to create the relation of landlord and tenant, and his entry is under and in pursuance of a grant to him of a larger and more definite interest, until such interest is vested in him, the law treats and considers his possession as that of a tenant at will. Such would be the case where one is permitted to enter into possession under a contract for the purchase of the land or for a future lease of the same. The tenant would not be liable for rent for the time he has occupied the land unless there is an express agreement to that effect. But he will render himself liable

for rent if he retains possession, after the executory contract under which he entered has come to an end, as well as where he surrenders his right of purchase and continues to hold possession with the intention to become a tenant. And he will be also liable in an action for damages for use and occupation during the pendency of the contract if the failure of such contract is the result of his own refusal or inability to fulfill his obligation under it. The rent is reserved in such a case, not on any implied contract to pay for the use and occupation, in the event that the tenant fails to perform his part of the contract, but on the theory that, his possession being given with a view to the tenant's performance of the contract, his failure to perform makes his holding a trespass, or the rent may be asked for the damages suffered from the tenant's breach of the contract of sale. In a similar manner is a vender liable as tenant at will for use and occupation, if he retains possession of the land after the contract of purchase has been executed and the deed of conveyance delivered. If the vender retains possession with consent of the vendee the action will be an implied contract for rent, while he would be liable in trespass for damages if such holding was without the permission of the grantee.

Qualities of Tenancies from Year to Year

As a consequence of the rule requiring a certain notice of the intention to terminate the estate before such termination can take place, the tenant was held to be possessed of a fixed and indefeasible estate for a definite period, the length of which is controlled by the character and the terms of the contract for rent (if it be yearly rental this estate is for one year, and if the rental be monthly, it is for one month), together with an indefinite obligation to continue the relation of landlord and tenant until it is determined by the proper notice from either of the parties. The tenant's estate survives the death of the tenant and goes to his personal representatives. It is also capable

of assignment, and the tenant may maintain his action for trespass against all intruders. Nor is it determined by the grant of the reversion by the lessor. In other words, the estate of the tenant from year to year cannot be determined, nor can the tenant relieve himself from liability for rent, except by giving a notice, having the requisities both as to the length, and the time of giving it, of his intention to determine the tenancy.

To Determine Tenancy From Year to Year

The length of time required to be observed in giving notice is regulated by statute, and generally varies with the length of the periods between the payment of rent. If it be yearly rental, the English rule which is followed in some of the States, requires six months' notice; while in some other States, a shorter time, usually three months, is required. If the rental should be for a period less than one year, as by the quarter, the month, etc., then, as a general rule, the notice must be for as long a time as the periods of payment. If the statute requires notice, but the length of time is not stipulated, a reasonable notice must be given and the parties may always by special agreement control the length and other provisions of the notice, the special agreement providing a substitute for the required notice. The notice must not only be given for a certain length of time before the estate is to terminate, but the estate can only be determined at the expiration of the time during which the tenant may lawfully hold, i.e., at the end of each rental period; it can only be determined at the end of one year, quarter, or month, according as the tenancy is respectively a yearly, quarterly, or monthly rental. This notice must be sufficiently clear in its terms as to the time when the tenancy is to expire, and must, as a general rule, be served upon the tenant personally although it may be left at the tenant's dwelling house with a servant or other person of discretionary age, who appears to be in charge of the premises. There may, of course, always be a surrender of the tenancy, with

the consent of both parties, at any time during the tenancy and without any previous notice. And so, likewise, the notice is not required where the lease by its terms terminates upon the breach of a condition.

How Notice May Be Waived

Such notice, when it fulfills all the requirements of the law, puts an end to the tenancy, unless the landlord accepts rent accruing after the expiration of the notice, and the tenancy becomes re-established. But in all such cases it is a matter depending upon the intention of the parties. The receipt of such rent is open to explanation, and the evidence is admissible to show that the landlord had no intention of waiving the notice, providing the tenant also had knowledge of the fact. An express agreement to waive the notice and to permit the tenant to remain in possession is in effect a revival of the original tenancy with all its terms, conditions and limitations which is equally binding upon both parties.

Tenancy at Sufferance

When one who has come lawfully into the possession of lands under an agreement with the owner retains such possession, after his right to it is terminated, he is said to be a tenant at sufferance. His estate is an unlawful one; he has no right to possession, but yet is not a tresspasser. And yet he has so far a vested interest in the land that any crop which he may plant and harvest during the continuance of the tenancy is his, free from the claims of the landlord and liable to execution for the debts of the former. Such are all persons who continue in possession after the determination of their particular estate, by and under which they originally acquired possession. Tenants for years, after the expiration of their terms, tenants per auter vie, after death of the cestui que vie, sublessees after the termination of the original lease, and the like, are all tenants at sufferance. But in the case of a tenant from year to year the tenancy at suf-

ferance only begins at the expiration of the current rental period and after giving the required legal notice. In order that a tenancy at sufferance may arise, the estate under which possession was originally gained must have been created by the agreement of the parties. If one enters into the possession by the act or authority of law, as, for example, a guardian, and retains possession after the law cease to authorize it, he is a trespasser and not a tenant at sufferance. A tenancy at sufferance would only exist where the holding over is not in pursuance of an agreement between the parties. Such an agreement would change the relation from a tenancy at sufferance to one at will or from year to year. If the parties have not expressly agreed upon any other terms the presumption is that the holding over is to be on the terms of the original lease. A notice of the landlord, before the termination of the lease, that an advance in rent would be asked, if the tenant held possession after his term is at an end, will have the same effect as an express agreement in changing the liability of the tenant. And although an agreement in the original lease to pay rent for them, the tenant continues in possession after the expiration of his term, or after the demand for payment of rent, will not take away from such holding over the character of the tenancy at sufferance, yet the actual payment and receipt of rent, in pursuance of such an agreement or without any previous agreement, will make the holding a tenancy at will, of one from year to year, according to the attending circumstances.

Incidents of Tenancy at Sufferance

Unlike all other tenancies, it does not rest upon privity of contract. It is created by implication of law for the purpose, perhaps the sole purpose of establishing, between the owner and the persons holding over, the tenure usually existing between landlord and tenant. As a consequence of this tenure, a tenant at sufferance cannot in an action by the landlord for re-

covery of the possession deny the title of his lessor, or set up in defense a superior title which he has acquired by purchase. Nor can the tenant give to his holding the character of adverse possession, so as to bar the lessor's claim under the Statute of Limitations. The tenancy re-existing between the lessor and his tenant at sufferance is identical in character and scope, with that between landlord and tenant for years. For the details of the doctrine reference may be had to the paragraph on estates for years. The tenant at sufferance has, however, no estate which he may assign. If he attempts an assignment, his assignee upon entry into possession becomes a trespasser, and has neither the rights nor the obligations of a tenant at sufferance, unless by the acceptance of rent and other recognitions of tenancy the relation of landlord and tenant is impliedly established between the assignee and the lessor. The assignee will then become a tenant at will or a tenant from year to year, according to the attending circumstances.

CHAPTER IV

Real Estate Titles

Titles

A title is the means by which one may acquire a right or ownership to things. When applied to real property, titles may be divided into two general classes, title by descent and title by purchase. Title by descent is that which one acquires by law as heir to the deceased owner. It is cast upon the owner with or without his consent. His assent is not necessary and he cannot by any disclaimer divest himself of the title so acquired. Every kind of title, whether vested by act or by the operation of the law is called a title by purchase. The party in whose favor it is created must accept it in order that any title may pass, either expressly or by acts which clearly indicate his assent. But he cannot be compelled to accept unless he has placed himself under obligations by a valid contract of sale.

Original and Derivative Titles

Titles by purchases may be again divided into original and derivative. An original title is acquired by act of the party claiming it, and is obtained by his entry into possession. It is a general rule in both natural and civil law that things under dominion of no person may become the property of any one by mere entry into possession, and it includes not only those things which have never been under the dominion of any one, but also those the dominion over which has been lost or abandoned. Derivative is that by which property is acquired from another, in whom the right of property has been vested. It involves the idea of a transfer or assignment or the right of property from one to another. This transfer may be affected by act of the former, as by conveyance, or testamentary disposition, or it may be by operation of law.

Definition

Title by descent is that which one acquires by operation of law upon which the death of the owner of the estate of inheritance which the deceased has not disposed of in any other manner. The person from whom the property descends is called the ancestor. The person who is appointed by the law to take the estate is called the heir. Technically one who takes the property under a will is not an heir. The word "heir" is also confined to those persons who take the real estate. One cannot be an heir to personal property. The heir cannot be ascertained until the death of the ancestor. The heir never takes in pursuance of the deceased owner's intention or will, consequently no one, who is entitled to the property as heir, can be shut out from the inheritance by any act of the ancestor unless such an act amounts to a disposition of the property by will. And even where a will disposing of all the ancestor's property, is produced, if it be shown that the omission of the heir as heir, especially if it be a child or a grandchild is the result of an accident, and that the testator fully intended that he should also take, under the will, such heir will be permitted to take the share of the estate to which he would have been entitled if the ancestor had died intestate. And in the absence of direct proof of the testator's intention, the failure to mention the particular heir will raise the presumption that the omission was accidental. Immediately upon the death of the ancestor the title to all his estates of inheritance vests in the heirs, subject to the widow's dower and husband's tenancy by courtesy and the claims of the ancestor's creditors. And if the lands have to be sold for any purpose, the proceeds of the sale would descend as real estate to the persons who would have inherited in the lands. He is entitled to rents and profits of the estate sold for the benefit of the creditors, even though the estate is insolvent. The heir need not offer proof that his ancestor dies intestate. Intestacy is presumed until a will is produced.

Consanguinity and Affinity

This includes those persons who claim as heirs of a deceased intestate, who are in some way related to him. Relationship is of two kinds, consanguinity and affinity. Consanguinity is that relationship which arises from a community of blood, and exists between persons who are descended from a common ancestor. This common ancestor is called the stirp or root. Consanguinity is again divided into lineal and collateral. Lineal consanguinity exists between persons who descend one from another in the direct or single line of descent. Father, grandfather, etc., in the ascending series and son, grandson, in the descending series, are related by lineal consanguinity.

Collateral consanguinity is where the relationship is traced through different lines of descent up to the common ancestor. Thus brothers, cousins, uncles, etc., are related by collateral consanguinity, respectively through the father and grandfather. Affinity is the relationship created between parties by marriage, either of themselves or of their respective relatives. Thus husband and wife, and their respective relatives, father and mother-in-law, and the like are related by affinity. At common law only kindred consanguinity could inherit from the deceased. And this rule was so strictly observed that even the husband or wife could not lay claim to the property of each other as heir. It would be escheated to the State instead of vesting in such relatives. But at the present day, in a large number of the American States, husband and wife are made capable by statute of inheriting from each other. In some States they inherit equally with the children and descendants of deceased children while in others they inherit only in the absence of lineal descendants, and in some they are even postponed to collateral heirs.

How Lineal Heirs Take

The universal rule is that the lineal descendant in the descending series inherit equally, no distinction

being made between males and females. If the lineal descendants are all the same degree removed from the intestate ancestor, they will inherit equally and are said to take per capita. But if they are removed in different degrees or where they consist of a son or daughter, and the children would inherit only that share of the deceased's estate to which their father or mother would have been entitled, if he or she had survived the deceased. Thus in the given case the estate would be divided into two equal parts, the surviving son or daughter taking one part, while the other would be divided among the children of the deceased child. This is called inheritance per stirpes, or by representation.

Title by Occupancy

Occupancy, in the technical signification of the term, is the act of taking possession of that which before was the common property of the people or community. Under the theory that in the prehistoric age lands were originally common property, this must have been the original mode of acquiring therein a right of private property.

Title by Accretion

It is a rule in the law of real property that whatever other species of property becomes attached to the land already in one's possession, it becomes a part of the land and the property of the owner, and the title thereto is generally acquired by the very act of attachment. It has been shown that the rule applies to houses and other structures erected upon the land by strangers without the consent of the owner of the land. But at the present we are only concerned with the doctrine so far as it applies to the additions of foreign soil through the term "alluvich". The mode of acquiring a right of property in such cases is called title by accretion. It is more properly an incident to real property than a mere acquisition of lands, but inasmuch as new property is thus acquired the means or manner of acquisition may fitly be called title.

Alluvion

This is the soil and various other things, such as marine and water plants, sea-weeds, etc., which are washed upon the shore of a stream by the action of the water. It is a notable and common fact that the soil on one side of a stream may be formed by the transportation of the particles from the other side, or by their deposit on the same side below. All such accretions become a part of the land upon which they are cast, and are the property of the owner of the soil. The accretions, however, become subject to all such incumbrances which have been imposed upon the original land. But the title to such accretions does not rest upon the mere fact of attachment to the soil, although such attachment is a necessary element. It rests rather upon the fact that the former owner is unable to identify his property. Alluvion is the gradual formation of the soil by the deposit of particles and atoms of the soil, which from the dry nature of the case the former owner cannot identify in the new shape which they have assumed. But if by some sudden convulsion a distinct and tangible part of the soil of one's land is detached and deposited upon another's premises, the latter acquires no title thereto by the mere act of deposit. The former owner can still identify it, and prove his property, but if he should permit such soil to remain upon the land sufficiently long to become permanently attached, his right of property will become lost; its removal after delay would probably injure the land. So, also, will a tract of land which has been submerged on the sea-shore be reclaimable if, by the gradual operation of the water the land should be brought above the surface again. The proprietorship of the original owner is restored, if the boundaries of the submerged land can be re-established.

Filum Aquae

Where two tracts of land are divided by a navigable stream, the general rule is that the boundary line

is the low water mark on the adjoining shore, and the soil or bed of the stream is the property of the State. But if the stream is not navigable, the boundary line is the centre of the stream, commonly called the "filumaquae", and the owners of the shore have a right to property in the bed of the stream up to the filum-aquae. If, therefore, an island arises in the current of a non-navigable stream, the proprietors of the opposite shores would acquire a title in severality to that part of the island which lies on their respective sides of the filum acquae. And if the stream disappear in consequence of gradual accretions, the boundary line is at the point of contact at which the stream finally disappears. Where the title to the bed of the stream is in one person, and the shore belongs to another, the boundary line is low water mark; the alluvion formed on the shore belongs to the owner of the shore, but the alluvion formed in the stream belongs to the owner of the bed. But if the stream is navigable, since the right of property in the bed of the stream is vested in the State an island forming in the current of the stream belongs to the State, and the owners of the shores are only entitled to whatever alluvion is deposited on their shore above the low water mark. So, also, if by some sudden change in the current of the navigable river, if what was once the bed is left uncovered, the property in the soil remains in the State. The owner of the shore does not acquire the title thereto, as he does to gradual and ordinary accretions, resulting from usual and natural changes in the current.

CHAPTER V

Rights of Property Holders

Rights and Liabilities of Mortgagors and Mortgagees

Whatever may be the view taken in any particular State of the character of the mortgage, whether it is construed as a conveyance of an estate in lands, or only the grant of a lien, the mortgagor's interest before condition broken is a legal estate and it is subject to the same rules of conveyance and descends to the heirs as any other kind of real estate. And it may be stated as a general proposition that, except as against the mortgagee, he is clothed with all the rights and liabilities which are usually incident to an estate in lands.

The Mortgagee's Interest

The mortgage is not real estate; it is personal property which descends with the debt to the personal representatives. And after his death the mortgagee's personal representatives exercise all the rights under the mortgage, a release or conveyance by the heir having no effect upon the rights of the personal representatives. The heir takes the mortgage as trustee for the personal representatives. If a statute prohibits foreign corporations from lending money within the State, such corporations cannot acquire any valid interest in a mortgage as a mortgagee. Such a mortgage would be void.

Merger of Interests

The interests of the mortgagor and mortgagee are not separate and distinct titles to the land. They constitute together the one title, which can alone be predicated of property. When, therefore, the two interests unite in one person, the lesser, or subordinate interest, will generally merge in the greater and be extinguished. The mortgagee's interest would be lost in the mortgagor's. But to effect a merger of interest

they must come together in one person at the same time, and in the same character or capacity. A conveyance of the equity or fee to a trustee of the mortgage, or to the mortgagee as trustee of another, would in neither case, cause a merger. It is also a general rule that the union of two estates in one person will not be permitted to work a merger, where, from the circumstances, an injury would result to parties interested in either. The existence of an outstanding second mortgage would prevent a merger in the hands of a person holding the first mortgage and the equity of redemption. But if the senior mortgagee enters into possession, after assignment to him of the equity, he is not accountable to the junior mortgagee for the rents. It is an almost universal rule that equity will keep alive the mortgage in the hands of the holder of the equity whenever its merger would do injury to one in any way interested therein. Where, however, it is the plain intention of the parties or in no wise injurious to their interests, that a merger should result from the union of the interests, equity will not interfere in their behalf.

Possession of the Mortgaged Premises

It is a general custom in this country for the mortgagor to retain possession until the breach of the condition, and even afterwards it is not usual for the mortgagee to enter into possession until the land has been decreed to him by foreclosure. The mortgagee is not entitled to possession until the mortgage is foreclosed and the estate made absolute in him, yet if the mortgagor delivers the possession to the mortgagee he cannot by any action regain it as long as the mortgage is not satisfied. His only remedy is to redeem the mortgage.

Rents and Profits

Whoever is in actual possession is entitled to the rents and profits issuing from the mortgaged premises. If it be the mortgagor, he takes them free from any

claim on the part of the mortgagee, even when he is in possession by sufferance only, and where the property is not sufficient to satisfy the mortgage debt. And even where the mortgagor is in possession by lawful right, if the property is an insufficient security, the mortgagor may apply for the appointment of a receiver, and the rents and profits accruing thereafter will be applied to the liquidation of the debt. But to entitle the mortgagee to the appointment of a receiver, special equitable grounds must be alleged; for example, the mortgagor is insolvent, or the security insufficient. If the mortgagor is solvent, or the mortgagee possess other means of protecting himself, the insufficiency of the mortgage security will not support an application for a receiver. The mortgagee is entitled to a judgment for rents and profits from the date of the decree of foreclosure. If he is in possession he is entitled to the rents and profits accruing after his entry, and where the land has been leased by the mortgagor, the entry of the mortgagee vests in him the right to call upon the lessee to pay the rent to him.

Insurance on the Mortgaged Premises

Both the mortgagor and the mortgagee have insurable interests in the premises, and they may insure their respective interests at the same time. The mortgagee can only insure to the amount of his debt. The mortgagor may insure to the full value of the premises, irrespective of the mortgagee's interest. A mortgage is not such an alienation as will defeat the policy of insurance not even so far as to reduce the mortgagor's insurable interest to the equity of redemption, and in the absence of the covenant requiring the mortgagor to keep the premises insured, the mortgagee has not the right to demand the appropriation of the insurance money to the payment of the mortgage debt, but where the mortgage calls for the insurance of the premises, and the mortgagor performs the covenant, the mortgagee acquires therein a beneficial interest, and is entitled to have the insurance money applied

to the debt. And so, also, if the insurance covers one of two or more pieces of property included in the same mortgage, the owners of the other pieces of property have the right to require the application of the insurance money to the payment of the debt; but where the loss is made payable to the mortgagor, or is assigned to the mortgagee without the consent of the company, alienation by the mortgagor of his interest will defeat the policy, even as to the mortgagee. For the complete protection of the mortgagee the policy should be assigned to him, with the consent of the company, and the assignment should be made to appear on the company's books as well as on the face of the policy. When the policy is in this shape the mortgagee, in case of loss, receives the insurance money in trust to apply it to the debt, and such application may be enforced, not only by the mortgagee, but by every one claiming through him and subject to the mortgage. The surplus, if any, goes to the mortgagor and those in privity with him.

Assignment of the Mortgage

Since the mortgage is in form a conveyance, and is required to be recorded like all other conveyances, the proper mode of assigning it is by deed or instrument of the same character as the mortgage itself, either separate from or written on the back of the mortgage, together with the assignment and delivery of the instrument of indebtedness, if there be any. Such an assignment would vest the entire legal interest of the mortgage in the assignee. Whether a deed is absolutely required to assign the legal interest of the mortgage depends upon the construction placed upon the mortgages in the State in which the question arises.

Assignment from the Lien Theory

In those States which have, to a greater or less degree, discarded the common law theory, it is held that being the principal thing and the mortgage only a security or lien, an assignment of the debt will oper-

ate as an equitable assignment of the mortgage, binding upon all persons having notice, and giving to the assignee the power in equity to exercise all the rights of the mortgagee. Under this theory, whatever constitutes in law of commercial paper a good assignment of the debt, will operate as an equitable assignment of the mortgage.

Assignment of the Mortgagor's Interest

The mortgagor's interest, whether before or after condition broken, can only be assigned by deed, for in any case and under all circumstances the mortgagor is considered as against all the world, except the mortgagee, as the owner of the legal estate, which he can convey as long as his equity of redemption has not been barred or foreclosed. As against the mortgagee, the mortgagor's assignee has the estate subject to the mortgage, and this is the case with a second mortgage as well as with the absolute purchaser.

Registry of Mortgages

It is a general rule in this country that if a mortgage is duly registered in the recorder's office, the record will be constructive notice of the mortgage to all subsequent purchasers and incumbrances, and gives to it a priority over such subsequently acquired interests; but the record is only notice of the mortgage as recorded, and if there is an error in the registration, as, for example, showing the mortgage to be a security for a less amount, it has priority over subsequent purchasers for the amount recorded, and not for the actual amount expressed in the mortgage.

The purchaser is not required by the registry laws to inspect the original deeds, for he is permitted to presume that the record is a correct copy, but the index is not a part of the record, and an error appearing therein will not prejudice the rights of the mortgagee. It is not even necessary for the mortgage to be indexed. The registration must also comply with the essential requirements of the registry laws, in

order to raise a constructive notice of the mortgage. What constitutes a proper record is the same in most of the States, whether the deed be a mortgage or an absolute conveyance. The subject, therefore, will be more clearly elucidated under the head of titles to real property.

Rule of Priority From Registry; Its Force and Effect

Notwithstanding the registry, laws provide for the recording of mortgages like other deeds; the general rule is that an unrecorded mortgage is still good between the parties themselves and all other persons claiming under them, or with notice of the mortgage; but if a subsequent purchase is made for value and without notice, the recorded deed has the priority over the unrecorded mortgage, and a recorded mortgage will take precedence to a prior unrecorded mortgage, even though the debt of the former mortgage was incurred at a time anterior to the execution of the latter. Where two mortgages are executed and recorded simultaneously they are concurrent liens on the property, and where they are recorded simultaneously, and by the understanding of the parties, express or implied, that one is not to have priority, an earlier record of one will not give it priority over the other; but if one of the mortgages is for the purchase money, it will have priority over one for some other debt, although they are simultaneously recorded. If both are for purchase money they will be concurrent liens.

Remedies Incident to Mortgage

If the party in possession, whether mortgagor or mortgagee, or their respective assignees, does anything in respect to the mortgaged property which constitutes waste, and as such essentially impairs the value of the inheritance, he will be responsible in damage to the other parties who are interested in the property, but a mortgagor is not guilty of waste, as against the mortgagee, if he fails to keep the premises in repair.

Foreclosure—Nature and Kind

In order to bar the mortgagor's equity of redemption and acquire the absolute title to the property or to satisfy his debt by a sale of the premises, the mortgagee must bring an action for foreclosure, and the action lies on a deed which is absolute on its face, as soon as it is shown that it was intended to operate as a mortgage, as well as on one which has been executed in proper form. The decree in such a case bars completely the right to redeem. There are two principal kinds of foreclosure, although the details in both in different States are different and are governed more or less by local statutes. The more ancient kind is what is called "strict foreclosure." This is an action in which a decree is rendered barring the mortgagor's equity, and vesting the absolute estate in the mortgagee if the debt is not paid within a certain time after the rendition of the decree. This kind of foreclosure is generally resorted to in the New England States, although in some of them, particularly Massachusetts, the form of the proceeding has been somewhat changed from the old common law foreclosure; but the decree is essentially the same. The so-called "equitable foreclosure" is effected by a decree ordering the property to be sold and the proceeds of the sale applied to the payment of the expense of the foreclosure suit and sale of the property, and the liquidation of the mortgage debt. If any surplus remains it is paid over to the mortgagor and his assigns and the junior incumbrancers will be entitled to share in the surplus in the order of their equities. This mode of foreclosure is juster and fairer to all parties, and nearly everywhere in this country, except in the New England States, foreclosure is always made by a sale of the premises, even though the right to the old common law strict foreclosure may still exist. Courts of equity will exercise their ordinary power of discretion, and will order a sale of the premises whenever a strict foreclosure would be manifestly to the detriment of the mortgagor. A bill for foreclosure may be filed

at any time after the breach of the condition, provided the action has not been barred by the Statute of Limitations, the same time being given for actions of foreclosure as for actions of ejectment. The condition is broken if the debt is not paid when it falls due. In other words, suit for foreclosure can be brought as soon as an action at law will lie on the debt. The mortgage may be made to fall due upon the default in the payment of an installment of interest or principal and the mortgage may then be foreclosed for the entire debt, although the time for the payment has not yet arrived, unless it is expressly provided that the default in payment of interest or installment of principal will not give the right to foreclosure; but where it is not provided that the entire debt shall fall due upon the default in interest or installment of principal, there may be yet given the right of foreclosure for the purpose of enforcing payment of the interest or installment of principal which is due, by the sale of so much property as is necessary, and a subsequent sale of the remaining property when the rest of the debt falls due. The mortgage may also provide that the default in the payment of the interest or installment of principal, may cause the entire debt to fall due "at the election of the mortgagee." In such a case, the mortgagee is not obliged to make his election immediately after the default, and it is not dependent upon any previous demand of payment or notice of intention to bring the action. The time for foreclosure may be postponed by an agreement for forbearance if the agreement is supported by a valuable consideration. The foreclosure can under these circumstances only be brought at the close of the time for forbearance.

Deeds of Trust

Somewhat similar in effect to mortgages with power of sale are deeds of trust in which the property is conveyed to a trustee in trust to secure the creditor in his claim, and to sell the property for the satisfaction of the debt, if it is not paid at maturity. This convey-

ance is in the nature of a mortgage and is very often used to secure an issue of railroad bonds, so as to avoid the necessity of giving a mortgage to each bond; but it is also very generally used in some of the Western States in the place of an ordinary mortgage, in order to obviate the difficulty of securing a valid sale of the premises, which is so often experienced when the mortgagee exercises the power of sale. It is the conveyance of a legal estate in trust to secure the debt and its satisfaction by sale upon the breach of the condition. It is to be distinguished from an assignment for the benefit of creditors and does not come within the operations of the laws which prohibit preferential assignments. It has been held that the mere payment of the debt will not revest the title in the grantor, but the payment or tender of payment will render the trust inoperative as far as the subsequent exercise of power is concerned. If the trustee dies or refuses to execute the trust, the court will appoint another to take his place; and in some of the States, by statute, it is provided that, upon the death, inability or refusal of the trustee to serve, the sheriff will be authorized to execute the trust. Or the deed may itself provide for a substitution of trustees, but without express authority the trustee can in no case delegate his power to others. But the court may, if they deem it wise, compel the trustee to execute the trust instead of appointing another. If there are two or more trustees named as joint donors of the power, the sale will be valid in the absence of direct proof of fraud or unfairness, although it is considered in the absence of one of them. This class of deeds of trust is governed by the same equitable rules which are applied to the ordinary trusts, unless there are statutory provisions intended to supersede them.

Easements

Easements are rights of enjoyment in, or issuing out of, another's land, which restrict or limit the owner's right of enjoyment either affirmatively, by giving an-

other person a right to use the land for certain purposes, as, for example, a right of passing over the land, or negatively by restraining the owner from using it in a particular manner, such as the erection of buildings so near to the boundary line as to exclude the light and air from the residence of an adjoining proprietor. A technical easement can only exist as appurtenant to an estate in lands, although there may be an incorporeal hereditament in the nature of an easement, which exists and is owned independently of any estate in the land. Two estates are thereby brought into relation with each other, and the existence of both is necessary to the maintenance of an easement. They are called the dominant and servient estates. The dominant estate is the one enjoying the easement, and to which it is attached; the servient estate is the one upon which the easement is imposed. As appurtenant to the dominant estate, the easement passes with it into whose hands soever the land may come. The easement cannot be severed from it.

How Acquired

Easements are acquired by grant, express or implied, or by prescription, which presupposes a grant. The doctrine of prescription as known at the common law is no longer in practical operation. It has been superseded by Statutes of Limitation, which fix a time in which a right may be acquired by adverse possession or enjoyment. The subject of title by prescription or limitation will be treated more fully in a subsequent paragraph.

Express Grant

Easements by grant are created by deed, containing an express reservation of the right. It cannot be created by parol. It need not be reserved in the same deed which creates or conveys the dominant estate; it may be granted in a separate deed. It may, also, be created in a deed conveying the servient estate by reservation to the grantor. For the creation of an

easement by express grant upon one estate in favor of another, there need not be any prior unity of title or estate in the two parcels of land. There need not be any previous connection whatever between the two estates or their owners.

Implied Grants

An easement is created by implied grant where the easement is so essential to the enjoyment of the estate granted that it is necessary to be implied to prevent the conveyance from operating as an injury to the grantee. Thus, if a man conveys a parcel of land, surrounded on all sides by his own land, so that the grantee cannot get to the land conveyed, except by passing over the other lands of the grantor, the law implies that a right of way over such lands was granted in the deed. What shall be considered such a necessity as will raise an easement by implication depends upon the facts of each particular case. It is a well established rule that the necessity need not be absolute. If the enjoyment of the estate granted cannot be complete without the easement, except at an unusual expense, or inconvenience, the easement will be implied. The enjoyment of the land without the easement need not be absolutely impossible. Thus, in the case of a right of way, it is not necessary that the land should be entirely surrounded, in order to create by implication an easement of way over the grantor's lands; it will be sufficient if the land granted is to such extent surrounded, that the grantee can get to it only with great difficulty and inconvenience.

Easement Implied From Covenant

Somewhat similar are the cases where, in the conveyance of several parcels of land to different grantees, the grantor imposes a restriction upon the use and mode of enjoyment of the land so granted, which creates a mutual benefit to the owners of the several parcels. Even though the restriction be in the form of a covenant, equity will construe it to have the bind-

ing force of an easement, and will sustain an action for its enforcement in favor of any one of the owners. They are covenants running with the land, and can be enforced by any one in whose possession any one of the parcels should fall. Such would be the case where, in granting several parcels of land, the conveyance contain covenants that any buildings thereafter erected upon any one of them shall be set back from the street a certain distance. An injunction would be granted at the suit of either of the owners of the several pieces of property restraining another from violating the covenant.

How Easements May be Lost or Extinguished

This may occur by acts of the owner of the dominant estate, or by acts of the owner of the servient estate. An easement may be released by deed of the owner of the dominant estate or it may be lost by abandonment. It cannot be released by parol agreement, unless the agreement is carried into execution by some affirmative act, as the creation of a new easement in the place of the old one, so that by non-user the first has lost. Mere non-user, even though for twenty years, will not of itself extinguish the easement unless there has been adverse possession. It must be accompanied with the express or implied intention of abandonment and the actual non-user must have incurred expenses upon his own estate. The three elements non-user, intention to abandon and damage to the owner of the servient estate, must occur in order to extinguish the easement. In cases of easements created by prescription the last element is not considered essential.

Kinds of Easements

The easements most commonly known are right of way, light and air, water support and party walls. Many other servitudes may be imposed upon the land, but a discussion of the classes just mentioned will be sufficient to illustrate the general principles.

Right of Way

Rights of this character are divided into private, where the right is in favor of one or more private individuals, and is appurtenant to an estate owned by them, and public, where it is enjoyed by the public generally. They are easements imposed upon another's lands, authorizing certain persons, or the public, as the case may be, to pass over it, in pursuit of specific or general objects.

A Private Way

May be created by express grant, or it may be applied from the circumstances surrounding the estate granted—these are called "ways of necessity"—or it may further be acquired by prescription. A way acquired for a particular mode of use will not be extended so as to include the right to use it in some other manner. Thus, if the right be limited to a foot-path, it cannot be used as a carriage-way or horse-way. Such an extension of the right would be an act of trespass, and render the owner of the dominant estate liable for damages to the owner of the servient estate. This would be the case, even though the burden upon the servient estate has not been materially increased. Neither can the way be used for the benefit of any other estate but the one to which the easement is appurtenant. A right of way may be granted subject to a condition and limitation, and the right in such cases cannot be claimed after the breach of the condition or happening of the limitation. Where the way is acquired by express or implied grant, the owner of the servient estate has the right to lay out the way in whatever manner will be most convenient to him, and will at the same time secure to the owner of the dominant estate the full enjoyment of the easement. But if the owner of the servient estate refuse to do this, the owner of the dominant estate may exercise the power. Once the way has been laid out it cannot be changed by either party without the consent of the other. Private ways may be acquired also by prescription.

Ways of Necessity

A way of necessity exists where the land granted is completely environed by land of the grantor, or partially by his land and the land of strangers. The law implies from these facts that a right of way over the grantor's lands was granted by the grantor as appurtenant to the estate. Inasmuch as the implication is raised from the existence of a necessity, the easement expires with the cessation of the necessity, as, for example, when a new way is acquired. When such a necessity exists as will create by implication a right of way, is a question of fact determined by the circumstances of each particular case. Mere inconvenience will not constitute such necessity. It must be strict necessity; but excessive expense in procuring another way would make it a case of strict necessity. Rear entrances to city lots cannot be claimed as ways of necessity. If a way of necessity is implied for any purpose, it may be used for any and all purposes for which private ways are generally adapted.

Who Must Repair the Way

In the absence of an express agreement, the grantee of the right of way must keep the way in repair; and if he fails to do so he has no right to use other adjacent land of the servient estate because the way has become impassable; but the obligation to repair may by covenant be imposed upon the owner of the servient estate. In such a case, if the latter violates the agreement, the grantee of the way may, if it is necessary, pass over the adjoining land of the servient estate.

Right of Water

Where a stream of water passes over the land of two or more adjacent owners, it has been established upon the doctrine of law that there can be no right of property in water except as to its use; that the adjacent owners have mutual easements upon the soil of each other for the free and unrestricted flow of water.

This rule, however, applies in its full force only to the natural streams. The riparian owners have the right to use the water to a reasonable extent, but cannot use it as to diminish the flow, corrupt the water or to dam it up and cause an overflow of the land above or diminish the volume of the stream below; but if the stream is prevented from inundating lowlands in times of freshets, there is no liability for so doing, although the volume of the stream may be thereby increased to the greater damage of the banks below. The stream cannot be diverted from its regular course, if by so doing injury results to the owners above or below. To what extent the water may be used by a riparian owner depends upon the circumstances of each case, and the only general rule which can be stated is that it must not be so used as to produce a perceptible damage to the other proprietors. The detention of water, if it is for a reasonable use, will not be actionable, even though it may cause injury to the proprietors below. But if the use be an unusual one, then it is not likely that the rule would apply. This rule is well established in favor of mill owners, the workings of whose mills by the water prevents its use for a similar purpose by a riparian proprietor below. The right to run a mill in such cases, and to dam up the water for that purpose, depends upon the priority of establishment. He who first creates a mill upon the banks of the stream obtains a prior right to the use of the stream for that purpose, and if the quantity of water is not sufficiently large to permit the running of more than one mill, no other mill can be erected. If a second mill is erected by a proprietor above, and the diversion and detention of water for the purpose of the mill are so great as to diminish materially the supply of water to the first mill, the owner of the latter can enjoin such detention or diversion of the water. The mill owner cannot, under any circumstances so dam up the water as to cause it to overflow the land above, or to divert it from the proprietor below, although in some States by statute mill owners are permitted to inflict such injury upon the adjoining proprietors by

the payment of compensation in the way of damages, the assessment and recovery of which are regulated by the statutes.

Party Walls

A party wall is one which is erected between two lots for the common benefit of the owners thereof in supporting the beams of their adjoining buildings. They are not tenants in common of the entire wall. Each has the title in severalty to one-half with an easement for support in the other half. Each of the owners can do whatever he pleases with his own half, provided he does not weaken the support of the other half, and if he tears down his half, he does it at the risk of rendering himself liable for any injuries sustained by the remaining portion of the wall. But it is not every wall which is common between two houses that has the characteristic of a party wall, but every such wall, by constant use as a common wall for twenty years, will become a party wall by prescription. Party walls are generally erected by express agreement between the parties, each paying his share of the expenses. The mere erection by one of a common wall between them will not subject the other to liability for one-half the expenses of erection, even though he derives as much benefit therefrom as the one who caused its erection. Party walls are generally, though not necessarily, erected one-half on each of the contiguous estates. The easements of the adjoining owners in each other's half of the party wall are lost whenever the party wall is pulled down or otherwise destroyed.

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